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99TH CONGRESS
2d Session

223

HOUSE OF REPRESENTATIVES

REPT. 99-682
Part 1

ORIGINAL

IMMIGRATION CONTROL AND LEGALIZATION AMENDMENTS ACT OF 1986

JULY 16, 1986.—Ordered to be printed

Mr. MAZZOLI, from the Committee on the Judiciary, submitted the following

REPORT

together with

ADDITIONAL AND DISSENTING VIEWS

[To accompany H.R. 3810]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill (H.R. 3810) having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE; REFERENCES IN ACT.

(a) SHORT TITLE.—This Act may be cited as the "Immigration Control and Legalization Amendments Act of 1986".

(b) AMENDMENTS TO IMMIGRATION AND NATIONALITY ACT.—Except as otherwise specifically provided in this Act, whenever in this Act an amendment or repeal is expressed as an amendment to, or repeal of, a provision, the reference shall be deemed to be made to the Immigration and Nationality Act.

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TITLE I—CONTROL OF ILLEGAL IMMIGRATION

PART A—EMPLOYMENT

SEC. 101. CONTROL OF UNLAWFUL EMPLOYMENT OF ALIENS AND UNFAIR IMMIGRATION-RELATED EMPLOYMENT PRACTICES.

(a) IN GENERAL.—(1) Chapter 8 of title II is amended by inserting after section 274 (8 U.S.C. 1324) the following new section:

"UNLAWFUL EMPLOYMENT OF ALIENS

"SEC. 274A. (a) MAKING EMPLOYMENT OF UNAUTHORIZED ALIENS UNLAWFUL.—

"(1) IN GENERAL.—It is unlawful for a person or other entity after the date of the enactment of this section to hire, or to recruit or refer for a fee, for employment in the United States—

"(A) an alien knowing the alien is an unauthorized alien (as defined in subsection (g)) with respect to such employment, or

"(B) an individual without complying with the requirements of subsection (b).

"(2) CONTINUING EMPLOYMENT.—It is unlawful for a person or other entity, after hiring an alien for employment subsequent to the date of the enactment of this section and in accordance with paragraph (1), to continue to employ the alien in the United States knowing the alien is (or has become) an unauthorized alien with respect to such employment.

"(3) DEFENSE.—A person or entity that establishes that it has complied in good faith with the requirements of subsection (b) with respect to the hiring, recruiting, or referral for employment of an alien in the United States has established an affirmative defense that the person or entity has not violated paragraph (1)(A) with respect to such hiring, recruiting, or referral.

"(4) USE OF LABOR THROUGH CONTRACT.—For purposes of this section, a person or other entity who uses a contract, subcontract, or exchange, entered into, renegotiated, or extended after the date of the enactment of this section, to obtain the labor of an alien in the United States knowing that the alien is an unau-

thorized alien (as defined in subsection (g)) with respect to performing such labor, shall be considered to have hired the alien for employment in the United States in violation of paragraph (1)(A).

"(5) USE OF STATE EMPLOYMENT AGENCY DOCUMENTATION.—For purposes of paragraphs (1)(B) and (3), a person or entity shall be deemed to have complied with the requirements of subsection (b) with respect to the hiring of an individual who was referred for such employment by a State employment agency (as defined by the Attorney General), if the person or entity has and retains (for the period and in the manner described in subsection (b)(3)) appropriate documentation of such referral by that agency, which documentation certifies that the agency has complied with the procedures specified in subsection (b) with respect to the individual's referral.

"(b) EMPLOYMENT VERIFICATION SYSTEM.—The requirements referred to in paragraphs (1)(B) and (3) of subsection (a) are, in the case of a person or other entity hiring, recruiting, or referring an individual for employment in the United States, the requirements specified in the following three paragraphs (and, to the extent applicable, paragraph (7)(C)):

"(1) ATTESTATION AFTER EXAMINATION OF DOCUMENTATION AND VALIDATION OF SOCIAL SECURITY ACCOUNT NUMBER.—

"(A) IN GENERAL.—The person or entity must attest, under penalty of perjury and on a form established or designated by the Attorney General by regulation, that he has verified that the individual is eligible to be employed (or recruited or referred for employment) in the United States—

"(i) by examining—

"(I) the individual's United States passport, or the individual's unexpired foreign passport, if the foreign passport has an appropriate, unexpired endorsement of the Attorney General authorizing the individual's employment in the United States, or

"(II) a document described in subparagraph (B) and a document described in subparagraph (C); and

"(ii) by validating (to the extent and in the manner required under paragraph (7)(C)) the social security account number presented by the individual.

A person or entity has complied with the requirement of clause (i) of this subparagraph with respect to examination of a document if the document reasonably appears on its face to be genuine. If an individual provides a document or combination of documents that reasonably appears on its face to be genuine and that is sufficient to meet the requirements of clause (i), nothing in this paragraph shall be construed as requiring the person or entity to solicit the production of any other document or as requiring the individual to produce such a document.

"(B) DOCUMENTS EVIDENCING EMPLOYMENT AUTHORIZATION.—A document described in this subparagraph is the individual's—

"(i) social security account number card issued by the Social Security Administration,

"(ii) certificate of birth in the United States or United States consular report of birth, or

"(iii) in the case of an individual without a social security card or a certificate of birth in the United States or a United States consular report of birth, any other identification acceptable to the Attorney General.

"(C) DOCUMENTS ESTABLISHING IDENTITY OF INDIVIDUAL.—A document described in this subparagraph is the individual's—

"(i) alien documentation, identification, and telecommunication card, or similar fraud-resistant card issued by the Attorney General to aliens, or other identification issued by the Attorney General to aliens who establish eligibility for employment,

"(ii) driver's license or similar document issued for the purpose of identification by a State, if it contains a photograph of the individual or such other personal identifying information relating to the individual as the Attorney General finds, by regulation, sufficient for purposes of this section, or

"(iii) in the case of individuals under 16 years of age or in a State which does not provide for issuance of an identification document (other than a driver's license) referred to in clause (ii), documentation of personal identity of such other type as the Attorney General finds, by regulation, provides a reliable means of identification.

"(2) INDIVIDUAL ATTESTATION OF EMPLOYMENT AUTHORIZATION.—The individual must attest, under penalty of perjury and on the form designated or established by the Attorney General for purposes of paragraph (1), that the individual is a citizen or national of the United States, an alien lawfully admitted for permanent residence, or an alien who is authorized under this Act or by the Attorney General to be hired, recruited, or referred for such employment.

"(3) RETENTION OF VERIFICATION FORM.—After completion of such form in accordance with paragraphs (1) and (2), the person or entity must retain the form and make it available for inspection by officers of the Service or of the Department of Labor during such period as the Attorney General shall specify in regulations.

"(4) COPYING OF DOCUMENTATION PERMITTED.—Notwithstanding any other provision of law, the person or entity may copy a document presented by an individual pursuant to this subsection and may retain the copy, but only (except as otherwise permitted under law) for the purpose of complying with the requirements of this subsection.

"(5) TIME FOR COMPLIANCE.—A person or entity has complied with the requirements of this subsection, with respect to the hiring of an individual, if the requirements of this subsection are first met not later than noon of the day following the day on which the individual is first employed by that person or entity.

"(6) LIMITATION ON USE OF ATTESTATION FORM.—A form designated or established by the Attorney General under this subsection and any information contained in or appended to such form, may not be used for purposes other than for enforcement of this section or section 1546 of title 18, United States Code.

"(7) SOCIAL SECURITY ACCOUNT NUMBER VALIDATION SYSTEM.—

"(A) ESTABLISHMENT OF SYSTEM.—The Attorney General, in cooperation with the Secretaries of Labor and Health and Human Services, shall establish a method to validate the social security account numbers of individuals applying to be hired, or recruited or referred for a fee, for employment in the United States.

"(B) PUBLICATION.—The Attorney General shall provide for publication in the Federal Register of notice of the establishment of the validation method and the procedures for its use not earlier than 6 months, and not later than 18 months, after the date of the enactment of this section.

"(C) IMPLEMENTATION.—Beginning on an effective date (not earlier than 90 days, and not later than 180 days, after the date final regulations are published under subparagraph (B)) set forth by the Attorney General, in order to comply with the requirement of paragraph (1)(A) of this subsection in the case of a person or other entity hiring, or recruiting or referring for a fee, an individual for employment in the United States, the person or other entity must, pursuant to the verification method—

"(i) submit the social security account number of the individual, and

"(ii) be provided and record on the form designated or established for purposes of that paragraph a validation code indicating that the number submitted is valid.

"(c) NO AUTHORIZATION OF NATIONAL IDENTIFICATION CARDS.—Nothing in this section shall be construed to authorize, directly or indirectly, the issuance or use of national identification cards or the establishment of a national identification card.

"(d) PENALTIES.—

"(1) CIVIL MONEY PENALTY FOR UNLAWFUL EMPLOYMENT, RECRUITING, OR REFERRAL.—

"(A) IN GENERAL.—In the case of a person or entity which is determined (after notice and opportunity for an administrative hearing under paragraph (4)(A)) to have violated paragraph (1)(A) or (2) of subsection (a) and which—

"(i) has not previously been determined (after opportunity for a hearing under paragraph (4)(A)) to have violated either such paragraph, the person or entity shall be subject to a civil penalty of not less than $1000, and not more than $2,000, for each unauthorized alien with respect to whom the violation occurred, or

"(ii) has previously been been determined (after opportunity for a hearing under paragraph (4)(A)) to have violated either such paragraph, the person or entity shall be subject to a civil penalty of not less than $2,000, and not more than $5,000, for each unauthorized alien with respect to whom the violation occurred.

In determining the level of civil penalty that is applicable under this subparagraph for violations of paragraph (1)(A) or (2) of subsection (a), determinations of more than one violation in the course of a single proceeding or adjudication shall be counted as a single determination.

"(B) CRIMINAL PENALTY FOR PATTERN OR PRACTICE VIOLATIONS.—In the case of a person or entity which has engaged in a pattern or practice of employment, recruitment, or referral in violation of paragraph (1)(A) or (2) of subsection (a), the person or entity shall be fined not more than $1,000, imprisoned not more than six months, or both, for each violation.

"(2) ENJOINING OF PATTERN OR PRACTICE VIOLATIONS.—Whenever the Attorney General has reasonable cause to believe that a person or entity is engaged in a pattern or practice of employment, recruitment, or referral in violation of paragraph (1)(A) or (2) of subsection (a), the Attorney General may bring a civil action in the appropriate district court of the United States requesting such relief, including a permanent or temporary injunction, restraining order, or other order against the person or entity, as the Attorney General deems necessary.

"(3) CIVIL MONEY PENALTY FOR PAPERWORK VIOLATIONS.—A person or entity which is determined (after notice and opportunity for an administrative hearing under paragraph (4)(A)) to have violated subsection (a)(1)(B) shall be subject to a civil penalty of not less than $250 and not more than $1,000 for each individual with respect to whom such violation occurred. In determining the amount of the penalty, due consideration shall be given to the size of the business of the employer being charged, the good faith of the employer, the seriousness of the violation, and the history of previous violations.

"(4) ADMINISTRATIVE PROCESS.—

"(A) HEARING.—

"(i) IN GENERAL.—Before assessing a civil penalty against a person or entity under this subsection for a violation of subsection (a), the Attorney General shall provide the person or entity with notice and, upon request made within a reasonable time (of not less than 30 days, as established by the Attorney General) of the date of the notice, a hearing respecting the violation.

"(ii) CONDUCT OF HEARING.—Any hearing so requested shall be conducted before an administrative law judge. The hearing shall be conducted in accordance with the requirements of section 554 of title 5, United States Code. The hearing shall be held at the nearest practicable place to the place where the person or entity resides or of the place where the alleged violation occurred. If no hearing is so requested, the assessment shall constitute a final and unappealable order.

"(iii) JUDICIAL REVIEW.—A person or entity (including the Attorney General) adversely affected by a final order respecting an assessment may, within 60 days after the date the final order is issued, file a petition in the Court of Appeals for the appropriate circuit for review of the order.

"(B) COLLECTION OF CIVIL PENALTIES.—If the person or entity against whom a civil penalty is assessed fails to pay the penalty within the time prescribed in such order, the Attorney General shall file a suit to collect the amount in the appropriate district court of the United States.

"(5) TREATMENT OF DISTINCT ENTITIES.—In applying this subsection in the case of a person or entity composed of distinct, physically separate subdivisions each of which provides separately for the hiring, recruiting, or referral for employment, without reference to the practices of, and not under the control of or common control with, another subdivision, each such subdivision shall be considered a separate person or entity.

"(e) PROHIBITION OF INDEMNITY BONDS.—

"(1) PROHIBITION.—It is unlawful for a person or other entity, in the hiring, recruiting, or referring for employment of any individual, to require the individual to post a bond or security, to pay or agree to pay an amount, or otherwise to provide a financial guarantee or indemnity, against any potential liability arising under this section relating to such hiring, recruiting, or referring of the individual.

"(2) CIVIL PENALTY.—Any person or entity which is determined, after notice and opportunity for an administrative hearing, to have violated paragraph (1) shall be subject to a civil penalty of $1,000 for each violation and to an administrative order requiring the return of any amounts received in violation of such

paragraph to the employee or, if the employee cannot be located, to the general fund of the Treasury.

"(f) MISCELLANEOUS PROVISIONS.—

"(1) DOCUMENTATION.—In providing documentation or endorsement of authorization of aliens (other than aliens lawfully admitted for permanent residence) authorized to be employed in the United States, the Attorney General shall provide that any limitations with respect to the period or type of employment or employer shall be conspicuously stated on the documentation or endorsement.

"(2) PREEMPTION.—The provisions of this section preempt any State or local law imposing civil or criminal sanctions (other than through licensing and similar laws) upon those who employ, or recruit or refer for a fee for employment, unauthorized aliens.

"(g) DEFINITION OF UNAUTHORIZED ALIEN.—As used in this section, the term 'unauthorized alien' means, with respect to the employment of an alien at a particular time, that the alien is not at that time either (1) an alien lawfully admitted for permanent residence, or (2) authorized to be so employed by this Act or by the Attorney General.".

(2) Except as provided in paragraphs (3), (4), and (5), the amendment made by paragraph (1) shall take effect on the date of the enactment of this Act.

(3) During the six-month period beginning on the first day of the first month after the date of the enactment of this Act—

(A) the Attorney General, in cooperation with the Secretaries of Agriculture, Commerce, Health and Human Services, Labor, and the Treasury and the Administrator of the Small Business Administration, shall disseminate forms and information to employers, employment agencies, and organizations representing employees and provide for public education respecting the requirements of section 274A of the Immigration and Nationality Act, and

(B) the Attorney General shall not conduct any proceeding, nor impose any penalty, under such section on the basis of any violation alleged to have occurred during the period.

(4) In the case of a person or entity, in the first instance in which the Attorney General has reason to believe that the person or entity may have violated subsection (a) of section 274A of the Immigration and Nationality Act during the subsequent 12-month period, the Attorney General shall provide a citation to the person or entity indicating that such a violation or violations may have occurred and shall not conduct any proceeding, nor impose any penalty, under such section on the basis of such alleged violation or violations.

(5)(A) Except as provided in subparagraph (B), before the end of the application period (as defined in subparagraph (C)(i)), the Attorney General shall not conduct any proceeding, nor impose any penalty, under section 274A of the Immigration and Nationality Act on the basis of any violation alleged to have occurred with respect to employment of an individual in seasonal agricultural services.

(B)(i) During the application period, it is unlawful for a person or entity (including a farm labor contractor) or an agent of such a person or entity, to recruit an unauthorized alien (other than an alien described in clause (ii)) who is outside the United States to enter the United States to perform seasonal agricultural services.

(ii) Clause (i) shall not apply to an alien who the person or entity reasonably believes meets the requirements of section 210(a)(2) of the Immigration and Nationality Act (relating to performance of seasonal agricultural services).

(iii) A person, entity, or agent that violates clause (i) shall be deemed to be subject to a penalty under section 274A(d) of the Immigration and Nationality Act in the same manner as if it had violated section 274A(a)(1)(A) of such Act, without regard to paragraph (4) of this subsection.

(C) In this paragraph:

(i) The term "application period" means the period described in section 210(a)(1) of the Immigration and Nationality Act (as added by section 302(a) of this Act).

(ii) The term "seasonal agricultural services" has the meaning given such term in section 210(g) of the Immigration and Nationality Act (as added by section 302(a) of this Act).

(iii) The term "unauthorized alien" has the meaning given such term in section 274A(g) of the Immigration and Nationality Act.

(6) The Attorney General shall, not later than the first day of the seventh month beginning after the date of the enactment of this Act, first issue, on an interim or other basis, such regulations as may be necessary in order to implement section 274A of the Immigration and Nationality Act.

(b) UNFAIR IMMIGRATION-RELATED EMPLOYMENT PRACTICES.—Chapter 8 of title II is further amended by inserting after section 274A, as inserted by subsection (a)(1), the following new section:

"UNFAIR IMMIGRATION-RELATED EMPLOYMENT PRACTICES

"SEC. 274B. (a) PROHIBITION OF DISCRIMINATION BASED ON NATIONAL ORIGIN OR CITIZENSHIP STATUS.—

"(1) GENERAL RULE.—It is an unfair immigration-related employment practice for a person or other entity to discriminate against any individual (other than an unauthorized alien) with respect to the hiring, or recruitment or referral for a fee, of the individual for employment or the discharging of the individual from employment—

"(A) because of such individual's national origin, or

"(B) in the case of a citizen or intending citizen (as defined in paragraph (3)), because of such individual's citizenship status.

"(2) EXCEPTIONS.—Paragraph (1) shall not apply to—

"(A) a person or other entity that employs three or fewer employees,

"(B) a person's or entity's discrimination because of an individual's national origin if the discrimination with respect to that person or entity and that individual is covered under section 703 of the Civil Rights Act of 1964,

"(C) discrimination because of citizenship status which is otherwise required in order to comply with law, regulation, or executive order, or required by Federal, State, or local government contract, or which the Attorney General determines to be essential for an employer to do business with an agency or department of the Federal, State, or local government, or

"(D) discrimination against an individual on the basis of the individual's English language skill in those certain instances where the English language skill is a bona fide occupational qualification reasonably necessary to the normal operation of that particular business or enterprise.

"(3) DEFINITION OF CITIZEN OR INTENDING CITIZEN.—As used in paragraph (1), the term 'citizen or intending citizen' means an individual who—

"(A) is a citizen or national of the United States, or

"(B) is an alien who—

"(i) is lawfully admitted for permanent residence, is granted the status of an alien lawfully admitted for temporary residence under section 245A(a)(1), is admitted as a refugee under section 207, or is granted asylum under section 208, and

"(ii) evidences an intention to become a citizen of the United States through completing a declaration of intention to become a citizen;

but does not include (I) an alien who fails to apply for naturalization within six months of the date the alien first becomes eligible (by virtue of period of lawful permanent residence) to apply for naturalization or, if later, within six months after the date of the enactment of this section and (II) an alien who has applied on a timely basis, but has not been naturalized as a citizen within 2 years after the date of the application, unless the alien can establish that the alien is actively pursuing naturalization, except that time consumed in the Service's processing the application shall not be counted toward the 2-year period.

"(b) CHARGES OF VIOLATIONS.—

"(1) IN GENERAL.—Except as provided in paragraph (2), any person alleging that the person is adversely affected directly by an unfair immigration-related employment practice or an officer of the Service alleging that an unfair immigration-related employment practice has occurred or is occurring may file a charge respecting such practice or violation with the Special Counsel (appointed under subsection (c)). Charges shall be in writing under oath or affirmation and shall contain such information as the Attorney General requires. The person filing a charge shall serve a notice of the charge (including the date, place, and circumstances of the alleged unfair immigration-related employment practice) on the person or entity involved within 10 days.

"(2) NO OVERLAP WITH EEOC COMPLAINTS.—No charge may be filed respecting an unfair immigration-related employment practice described in subsection (a)(1)(A) if a charge with respect to that practice based on the same set of facts has been filed with the Equal Employment Opportunity Commission under title VII of the Civil Rights Act of 1964, unless the charge is dismissed as being outside the scope of such title. No charge respecting an employment practice may be filed with the Equal Employment Opportunity Commission under such title if a charge with respect to such practice based on the same set of facts has been

filed under this subsection, unless the charge is dismissed under this section as being outside the scope of this section.

"(c) SPECIAL COUNSEL.—

"(1) APPOINTMENT.—The President shall appoint, by and with the advice and consent of the Senate, a Special Counsel for Immigration-Related Unfair Employment Practices (hereinafter in this section referred to as the 'Special Counsel') within the Department of Justice to serve for a term of four years. In the case of a vacancy in the office of the Special Counsel the President may designate the officer or employee who shall act as Special Counsel during such vacancy.

"(2) DUTIES.—The Special Counsel shall be responsible for investigation of charges and issuance of complaints under this section and in respect of the prosecution of all such complaints before administrative law judges and the exercise of certain functions under subsection (i)(1).

"(3) COMPENSATION.—The Special Counsel is entitled to receive compensation at the rate now or hereafter provided for grade GS–17 of the General Schedule, under section 5332 of title 5, United States Code.

"(4) REGIONAL OFFICES.—The Special Counsel, in accordance with regulations of the Attorney General, shall establish such regional offices as may be necessary to carry out his duties.

"(d) INVESTIGATION OF CHARGES.—

"(1) BY SPECIAL COUNSEL.—The Special Counsel shall investigate each charge received and, within 120 days of the date of the receipt of the charge, determine whether or not there is reasonable cause to believe that the charge is true and whether or not to bring a complaint with respect to the charge before an administrative law judge. The Special Counsel may, on his own initiative, conduct investigations respecting unfair immigration-related employment practices and, based on such an investigation and subject to paragraph (3), file a complaint before such a judge.

"(2) PRIVATE ACTIONS.—If the Special Counsel, after receiving such a charge respecting an unfair immigration-related employment practice which alleges knowing and intentional discriminatory activity or a pattern or practice of discriminatory activity, has not filed a complaint before an administrative law judge with respect to such charge within such 120-day period, the person making the charge may (subject to paragraph (3)) file a complaint directly before such a judge.

"(3) TIME LIMITATIONS ON COMPLAINTS.—No complaint may be filed respecting any unfair immigration-related employment practice occurring more than 180 days prior to the date of the filing of the charge with the Special Counsel and the service of a copy thereof upon the person or entity against whom such charge is made. This subparagraph shall not prevent the subsequent amending of a charge or complaint under subsection (e)(1).

"(e) HEARINGS.—

"(1) NOTICE.—Whenever a complaint is made that a person or entity has engaged in or is engaging in any such unfair immigration-related employment practice, an administrative law judge shall have power to issue and cause to be served upon such person or entity a copy of the complaint and a notice of hearing before the judge at a place therein fixed, not less than five days after the serving of the complaint. Any such complaint may be amended by the judge conducting the hearing in the judge's discretion at any time prior to the issuance of an order based thereon. The person or entity so complained of shall have the right to file an answer to the original or amended complaint and to appear in person or otherwise and give testimony at the place and time fixed in the complaint.

"(2) JUDGES HEARING CASES.—Hearings on complaints under this subsection shall be considered before administrative law judges who are specially designated by the Attorney General as having special training respecting employment discrimination and, to the extent practicable, before such judges who only consider cases under this section.

"(3) COMPLAINANT AS PARTY.—Any person filing a charge with the Special Counsel respecting an unfair immigration-related employment practice shall be considered a full party to any complaint before an administrative law judge respecting such practice and any subsequent appeal respecting that complaint. In the discretion of the judge conducting the hearing, any other person may be allowed to intervene in the said proceeding and to present testimony.

"(f) TESTIMONY AND AUTHORITY OF HEARING OFFICERS.—

"(1) TESTIMONY.—The testimony taken by the administrative law judge shall be reduced to writing. Thereafter, the judge, in his discretion, upon notice may provide for the taking of further tes imony or hear argument.

"(2) AUTHORITY OF ADMINISTRATIVE LAW JUDGES.—In conducting investigations and hearings under this subsection and in accordance with regulations of the Attorney General, the Special Counsel and administrative law judges shall have reasonable access to examine evidence of any person or entity being investigated. The administrative law judges by subpoena may compel the attendance of witnesses and the production of evidence at any designated place or hearing. In case of contumacy or refusal to obey a subpoena lawfully issued under this paragraph and upon application of the administrative law judge, an appropriate district court of the United States may issue an order requiring compliance with such subpoena and any failure to obey such order may be punished by such court as a contempt thereof.

"(g) DETERMINATIONS.—

"(1) ORDER.—The administrative law judge shall issue and cause to be served on the parties to the proceeding an order.

"(2) ORDERS FINDING VIOLATIONS.—

"(A) IN GENERAL.—If, upon the preponderance of the testimony taken, an administrative law judge determines that that any person or entity named in the complaint has engaged in or is engaging in any such unfair immigration-related employment practice, then the judge shall state his findings of fact and shall issue and cause to be served on such person or entity an order which requires such person or entity to cease and desist from such unfair immigration-related employment practice.

"(B) CONTENTS OF ORDER.—Such an order also may require the person or entity—

"(i) to comply with the requirements of section 274A(b) with respect to individuals hired (or recruited or referred for employment for a fee) during a period of up to three years;

"(ii) to retain for the period referred to in clause (i) and only for purposes consistent with section 274A(b)(6), the name and address of each individual who applies, in person or in writing, for hiring for an existing position, or for recruiting or referring for a fee, for employment in the United States;

"(iii) to hire individuals directly and adversely affected, with or without back pay; and

"(iv)(I) except as provided in subclause (II), to pay a civil penalty of not more than $1,000 for each individual discriminated against, and

"(II) in the case of a person or entity previously subject to such an order, to pay a civil penalty of not more than $2,000 for each individual discriminated against.

"(C) LIMITATION ON BACK PAY REMEDY.—In providing a remedy under subparagraph (B)(iii), back pay liability shall not accrue from a date more than two years prior to the date of the filing of a charge with an administrative law judge. Interim earnings or amounts earnable with reasonable diligence by the individual or individuals discriminated against shall operate to reduce the back pay otherwise allowable under such paragraph. No order shall require the hiring of an individual as an employee or the payment to an individual of any back pay, if the individual was refused employment for any reason other than discrimination on account of national origin or citizenship status.

"(D) TREATMENT OF DISTINCT ENTITIES.—In applying this subsection in the case of a person or entity composed of distinct, physicially separate subdivisions each of which provides separately for the hiring, recruiting, or referring for employment, without reference to the practices of, and not under the control of or common control with, another subdivision, each such subdivision shall be considered a separate person or entity.

"(3) ORDERS NOT FINDING VIOLATIONS.—If upon the preponderance of the testimony taken an administrative law judge determines that the person or entity named in the complaint has not engaged or is not engaging in any such unfair immigration-related employment practice, then the judge shall state his findings of fact and shall issue an order dismissing the complaint.

"(h) AWARDING OF ATTORNEYS' FEES.—In any complaint respecting an unfair immigration-related employment practice, an administrative law judge, in the judge's discretion, may allow a prevailing party, other than the United States, a reasonable attorney's fee.

"(i) APPLICATION OF CERTAIN NLRB PROCEDURES.—

"(1) IN GENERAL.—The provisions of subsections (d), (e), (f), (g), and (j) of section 10 of the National Labor Relations Act (29 U.S.C. 160) shall apply to court petitions and review of orders under this section in the same manner as they apply to court petitions and orders under that section, except that—

"(A) the authority of the General Counsel or the National Labor Relations Board under subsections (d), (f), and (g) and the second through seventh sentences of subsection (e) shall be exercised for purposes of this paragraph through the Special Counsel or the administrative law judge involved, respectively, and

"(B) the authority of the National Labor Relations Board under subsection (j) and the first sentence of subsection (e) shall be exercised for purposes of this paragraph through the Special Counsel.

"(2) AWARDING OF ATTORNEYS' FEES.—In any proceeding referred to in paragraph (1), the court, in its discretion, may allow a prevailing party, other than the United States, a reasonable attorney's fee as part of costs.".

(c) CONFORMING AMENDMENTS TO MIGRANT AND SEASONAL AGRICULTURAL WORKER PROTECTION ACT.—(1) The Migrant and Seasonal Agricultural Worker Protection Act (Public Law 97-470) is amended—

(A) by striking out "101(a)(15)(H)(ii)" in paragraphs (8)(B) and (10)(B) of section 3 (29 U.S.C. 1802) and inserting in lieu thereof "101(a)(15)(H)(ii)(a)";

(B) in section 103(a) (29 U.S.C. 1813(a))—

(i) by striking out "or" at the end of paragraph (4),

(ii) by striking out the period at the end of paragraph (5) and inserting in lieu thereof "; or", and

(iii) by adding at the end the following new paragraph:

"(6) has been found to have violated paragraph (1) or (2) of section 274A(a) of the Immigration and Nationality Act.";

(C) by striking out section 106 (29 U.S.C. 1816) and the corresponding item in the table of contents; and

(D) by striking out "section 106" in section 501(b) (29 U.S.C. 1851(b)) and by inserting in lieu thereof "paragraph (1) or (2) of section 274A(a) of the Immigration and Nationality Act".

(2) The amendments made by paragraph (1) shall apply to the employment, recruitment, referral, or utilization of the services of an individual occurring on or after the first day of the seventh month beginning after the date of the enactment of this Act.

(d) NO EFFECT ON EEOC AUTHORITY.—Except as may be specifically provided in this section, nothing in this section shall be construed to restrict the authority of the Equal Employment Opportunity Commission to investigate allegations, in writing and under oath or affirmation, of unlawful employment practices, as provided in section 706 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-5), or any other authority provided therein.

(e) CONFORMING AMENDMENT TO TABLE OF CONTENTS.—The table of contents is amended by inserting after the item relating to section 274 the following new items:

"Sec. 274A. Unlawful employment of aliens.
"Sec. 274B. Unfair immigration-related employment practices.".

SEC. 102. FRAUD AND MISUSE OF CERTAIN IMMIGRATION-RELATED DOCUMENTS.

(a) APPLICATION TO ADDITIONAL DOCUMENTS.—Section 1546 of title 18, United States Code, is amended—

(1) by amending the heading to read as follows:

"**§ 1546. Fraud and misuse of visas, permits, and other documents**";

(2) by striking out "or other document required for entry into the United States" in the first paragraph and inserting in lieu thereof "border crossing card, alien registration receipt card, or other document prescribed by statute or regulation for entry into or as evidence of authorized stay or employment in the United States";

(3) by striking out "or document" in the first paragraph and inserting in lieu thereof "border crossing card, alien registration receipt card, or other document prescribed by statute or regulation for entry into or as evidence of authorized stay or employment in the United States";

(4) by striking out "$2,000" and inserting in lieu thereof "$5,000";

(5) by inserting "(a)" before "Whoever" the first place it appears; and

(6) by adding at the end the following new subsections:

"(b) Whoever uses—

"(1) an identification document, knowing (or having reason to know) that the document was not issued lawfully for the use of the possessor,

"(2) an identification document knowing (or having reason to know) that the document is false, or

"(3) a false attestation,

for the purpose of satisfying a requirement of section 274A(b) of the Immigration and Nationality Act, shall be fined not more than $5,000, or imprisoned not more than two years, or both.

"(c) This section does not prohibit any lawfully authorized investigative, protective, or intelligence activity of a law enforcement agency of the United States, a State, or a subdivision of a State, or of an intelligence agency of the United States, or any activity authorized under title V of the Organized Crime Control Act of 1970 (18 U.S.C. note prec. 3481).".

(b) CONFORMING AMENDMENT TO TABLE OF SECTIONS.—The item relating to section 1546 in the table of sections of chapter 75 of such title is amended to read as follows:

"1546. Fraud and misuse of visas, permits, and other documents".

PART B—IMPROVEMENT OF ENFORCEMENT AND SERVICES

SEC. 111. AUTHORIZATION OF APPROPRIATIONS FOR ENFORCEMENT AND SERVICE ACTIVITIES OF THE IMMIGRATION AND NATURALIZATION SERVICE.

(a) TWO ESSENTIAL ELEMENTS.—Two essential elements of the program of immigration control and reform established by this Act are—

(1) an increase in the border patrol and other enforcement activities of the Immigration and Naturalization Service and of other appropriate Federal agencies in order to prevent and deter the illegal entry of aliens into the United States, and

(2) an increase in examinations and other service activities of the Immigration and Naturalization Service and other appropriate Federal agencies in order to ensure prompt and efficient adjudication of petitions and applications provided for under the Immigration and Nationality Act.

(b) INCREASED AUTHORIZATION OF APPROPRIATIONS FOR INS AND EOIR.—In addition to any other amounts authorized to be appropriated, in order to carry out this Act there are authorized to be appropriated to the Department of Justice—

(1) for the Immigration and Naturalization Service, for fiscal year 1986, $422,000,000, and for fiscal year 1987, $419,000,000; and

(2) for the Executive Office of Immigration Review, for fiscal year 1986, $12,000,000, and for fiscal year 1987, $15,000,000.

(c) USE OF FUNDS FOR IMPROVED SERVICES.—Of the funds appropriated to the Department of Justice for the Immigration and Naturalization Service, the Attorney General shall provide for improved immigration and naturalization services and for enhanced community outreach and in-service training of personnel of the Service.

(d) DATA PROCESSING REQUIREMENTS OF THE INS.—(1) The Attorney General shall report to the Committees on the Judiciary of the House of Representatives and the Senate, and to any other appropriate committees of the Congress, not later than six months after the date of the enactment of this Act, on the results of a comprehensive analysis of the data processing requirements of the Immigration and Naturalization Service. The report shall include—

(A) an assessment of the data processing needs of the Service, and

(B) an analysis of the alternatives considered to meet those requirements, including the use of regional centers and other available resources of the Department of Justice.

(2) The Attorney General shall provide that any automatic data processing equipment, facilities, and software of the Immigration and Naturalization Service are acquired consistent with the provisions of section 111 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 759). No such equipment, facilities, or software may be ordered, acquired, or installed without the prior review and approval of the Administrator of General Services. The Administrator shall notify Congress in writing of all such approvals, together with any limitations or conditions thereon, or modifications thereto.

(3) Effective November 18, 1985, neither the Attorney General nor the Immigration and Naturalization Service may order, acquire, or install any new data processing equipment, facilities, or software for the use of the Service under the existing contract known as Acquisition II until 45 days after the date that Congress receives written notification under paragraph (2) of the approval, by the Administrator of General Services, of the order, acquisition, or installation.

SEC. 112. UNLAWFUL TRANSPORTATION OF ALIENS TO THE UNITED STATES.

Subsection (a) of section 274 (8 U.S.C. 1324) is amended to read as follows:

"(a) CRIMINAL PENALTIES.—(1) Any person who—

"(A) knowing that a person is an alien, brings to or attempts to bring to the United States in any manner whatsoever such person at a place other than a designated port of entry or place other than as designated by the Commissioner, regardless of whether such alien has received prior official authorization to come to, enter, or reside in the United States and regardless of any future official action which may be taken with respect to such alien;

"(B) knowing or in reckless disregard of the fact that an alien has come to, entered, or remains in the United States in violation of law, transports, or moves or attempts to transport or move such alien within the United States by means of transportation or otherwise, in furtherance of such violation of law; or

"(C) knowing or in reckless disregard of the fact that an alien has come to, entered, or remains in the United States in violation of law, conceals, harbors, or shields from detection, or attempts to conceal, harbor, or shield from detection, such alien in any place, including any building or any means of transportation,

shall be fined not more than $10,000, imprisoned not more than five years, or both, for each alien in respect to whom any violation of this paragraph occurs.

"(2) Any person who, knowing or in reckless disregard of the fact that an alien has not received prior official authorization to come to, enter, or reside in the United States, brings to or attempts to bring to the United States in any manner whatsoever, such alien, regardless of any official action which may later be taken with respect to such alien shall, for each transaction constituting a violation of this paragraph, regardless of the number of aliens involved—

"(A) be fined not more than $5,000, or imprisoned not more than one year, or both; or

"(B) in the case of—

"(i) a second or subsequent offense,

"(ii) an offense done for the purpose of commercial advantage or private financial gain, or

"(iii) an offense in which the alien is not upon arrival immediately brought and presented to an appropriate immigration officer at a designated port of entry,

be fined not more than $10,000, or imprisoned not more than five years, or both.".

SEC. 113. TREATMENT OF IMMIGRATION EMERGENCIES.

(a) IMMIGRATION CONTINGENCY PLAN.—Section 103 (8 U.S.C. 1103) is amended by adding at the end the following new subsection:

"(c) The Attorney General shall develop, and may from time to time modify, a contingency plan to provide for the allocation and management of personnel and resources in the event of an immigration emergency. In developing such a plan, the Attorney General shall consult with the Judiciary Committees of the House of Representatives and of the Senate and with State and local governments.".

(b) IMMIGRATION EMERGENCY FUND.—Section 404 (8 U.S.C. 1101 note) is amended by inserting "(a)" after "SEC. 404." and by adding at the end the following new subsection:

"(b) There are authorized to be appropriated to an immigration emergency fund, to be established in the Treasury, $35,000,000, to be used in accordance with the immigration contingency plan developed under section 103(c) to provide for an increase in border patrol or other enforcement activities of the Service and for reimbursement of State and localities in providing assistance as requested by the Attorney General in meeting an immigration emergency, except that no amounts may be withdrawn from such funds with respect to an emergency unless the President has determined that the immigration emergency exists and has certified such fact to the Judiciary Committees of the House of Representatives and of the Senate.".

PART C—VERIFICATION OF STATUS UNDER CERTAIN PROGRAMS

SEC. 121. VERIFICATION OF IMMIGRATION STATUS OF ALIENS APPLYING FOR BENEFITS UNDER CERTAIN PROGRAMS.

(a) REQUIRING IMMIGRATION STATUS VERIFICATION.—

(1) UNDER AFDC, MEDICAID, UNEMPLOYMENT COMPENSATION, AND FOOD STAMP PROGRAMS.—Section 1137 of the Social Security Act (42 U.S.C. 1320b-7) is amended—

(A) in the matter in subsection (a) before paragraph (1), by inserting "which meets the requirements of subsection (d) and" after "income and eligibility verification system",

(B) in subsection (b), by striking out "income verification system" in the matter preceding paragraph (1) and inserting in lieu thereof "income and eligibility verification system", and

(C) by adding at the end the following new subsections:

"(d) The requirements of this subsection, with respect to an income and eligibility verification system of a State, are as follows:

"(1)(A) The State shall require, as a condition of an individual's eligibility for benefits under any program listed in subsection (b), a declaration in writing by the individual (or, in the case of an individual who is a child, by another on the individual's behalf), under penalty of perjury, stating whether or not the individual is a citizen or national of the United States, and, if that individual is not a citizen or national of the United States, that the individual is in a satisfactory immigration status.

"(B) In this subsection—

"(i) in the case of the program described in subsection (b)(1), any reference to an individual's eligibility for benefits under the program shall be considered a reference to the individual's being considered a dependent child or to the individual's being treated as a caretaker relative or other person whose needs are to be taken into account in making the determination under section 402(a)(7),

"(ii) in the case of the program described in subsection (b)(4)—

"(I) any reference to the State shall be considered a reference to the State agency, and

"(II) any reference to an individual's eligibility for benefits under the program shall be considered a reference to the individual's eligibility to participate in the program as a member of a household, and

"(III) the term 'satisfactory immigration status' means an immigration status which does not make the individual ineligible for benefits under the applicable program.

"(2) If such an individual is not a citizen or national of the United States, there must be presented either—

"(A) alien registration documentation or other proof of immigration registration from the Immigration and Naturalization Service that contains the individual's alien admission number or alien file number (or numbers if the individual has more than one number), or

"(B) such other documents as the State determines constitutes reasonable evidence indicating a satisfactory immigration status.

"(3) If the documentation described in paragraph (2)(A) is presented, the State shall utilize the individual's alien file or alien admission number to verify with the Immigration and Naturalization Service the individual's immigration status through an automated or other system (designated by the Service for use with States) that—

"(A) utilizes the individual's name, file number, admission number, or other means permitting efficient verification, and

"(B) protects the individual's privacy to the maximum degree possible.

"(4) In the case of such an individual who is not a citizen or national of the United States, if, at the time of application for benefits, the statement described in paragraph (1) is submitted but the documentation required under paragraph (2) is not presented or if the documentation required under paragraph (2)(A) is presented but such documentation is not verified under paragraph (3)—

"(A) the State—

"(i) shall provide a reasonable opportunity to submit to the State evidence indicating a satisfactory immigration status, and

"(ii) may not delay, deny, reduce, or terminate the individual's eligibility for benefits under the program on the basis of the individual's immigration status until such a reasonable opportunity has been provided; and

"(B) if there are submitted documents which the State determines constitutes reasonable evidence indicating such status—

"(i) the State shall transmit to the Immigration and Naturalization Service photostatic or other similar copies of such documents for official verification,

"(ii) pending such verification, the State may not delay, deny, reduce, or terminate the individual's eligibility for benefits under the program on the basis of the individual's immigration status, and

"(iii) the State shall not be liable for the consequences of any action, delay, or failure of the Service to conduct such verification.

"(5) If the State determines, after complying with the requirements of paragraph (1), that such an individual is not in a satisfactory immigration status under the applicable program—

"(A) the State shall deny or terminate the individual's eligibility for benefits under the program, and

"(B) the applicable fair hearing process shall be made available with respect to the individual.

"(e) Each Federal agency responsible for administration of a program described in subsection (b) shall not take any compliance, disallowance, penalty, or other regulatory action against a State with respect to any error in the State's determination to make an individual eligible for benefits based on citizenship or immigration status—

"(1) if the State has provided such eligibility based on a verification of satisfactory immigration status by the Immigration and Naturalization Service,

"(2) because the State, under subsection (d)(4)(A)(ii), was required to provide a reasonable opportunity to submit documentation,

"(3) because the State, under subsection (d)(4)(B)(ii), was required to wait for the response of the Immigration and Naturalization Service to the State's request for official verification of the immigration status of the individual, or

"(4) because of a fair hearing process described in subsection (d)(5)(B).".

(2) UNDER SSI PROGRAM.—Section 1631(e)(1)(B) of such Act (42 U.S.C. 1383(e)(1)(B)) is amended by striking out "and (c) of such section 1137" and inserting in lieu thereof ", (c), and (d) of such section 1137".

(3) UNDER HOUSING ASSISTANCE PROGRAMS—Section 214 of the Housing and Community Development Act of 1980 (42 U.S.C. 1436a) is amended by adding at the end the following new subsections:

"(d) The following conditions apply with respect to financial assistance being provided for the benefit of an individual:

"(1)(A) There must be a declaration in writing by the individual (or, in the case of an individual who is a child, by another on the individual's behalf), under penalty of perjury, stating whether or not the individual is a citizen or national of the United States, and, if that individual is not a citizen or national of the United States, that the individual is in a satisfactory immigration status.

"(B) In this subsection, the term 'satisfactory immigration status' means an immigration status which does not make the individual ineligible for financial assistance.

"(2) If such an individual is not a citizen or national of the United States, there must be presented either—

"(A) alien registration documentation or other proof of immigration registration from the Immigration and Naturalization Service that contains the individual's alien admission number or alien file number (or numbers if the individual has more than one number), or

"(B) such other documents as the Secretary determines constitutes reasonable evidence indicating a satisfactory immigration status.

"(3) If the documentation described in paragraph (2)(A) is presented, the Secretary shall utilize the individual's alien file or alien admission number to verify with the Immigration and Naturalization Service the individual's immigration status through an automated or other system (designated by the Service for use with States) that—

"(A) utilizes the individual's name, file number, admission number, or other means permitting efficient verification, and

"(B) protects the individual's privacy to the maximum degree possible.

"(4) In the case of such an individual who is not a citizen or national of the United States, if, at the time of application for financial assistance, the statement described in paragraph (1) is submitted but the documentation required under paragraph (2) is not presented or if the documentation required under paragraph (2)(A) is presented but such documentation is not verified under paragraph (3)—

"(A) the Secretary—

"(i) shall provide a reasonable opportunity to submit to the Secretary evidence indicating a satisfactory immigration status, and

"(ii) may not delay, deny, reduce, or terminate the individual's eligibility for financial assistance on the basis of the individual's immigration status until such a reasonable opportunity has been provided; and

"(B) if there are submitted documents which the Secretary determines constitutes reasonable evidence indicating such status—

"(i) the Secretary shall transmit to the Immigration and Naturalization Service photostatic or other similar copies of such documents for official verification,

"(ii) pending such verification, the Secretary may not delay, deny, reduce, or terminate the individual's eligibility for financial assistance on the basis of the individual's immigration status, and

"(iii) the Secretary shall not be liable for the consequences of any action, delay, or failure of the Service to conduct such verification.

"(5) If the Secretary determines, after complying with the requirements of paragraph (4), that such an individual is not in a satisfactory immigration status—

"(A) the Secretary shall deny or terminate the individual's eligibility for financial assistance, and

"(B) the applicable fair hearing process shall be made available with respect to the individual.

In this subsection and subsection (e), the term 'Secretary' refers to the Secretary and to a public housing authority or other entity which makes financial assistance available.

"(e) The Secretary shall not take any compliance, disallowance, penalty, or other regulatory action against an entity with respect to any error in the entity's determination to make an individual eligible for financial assistance based on citizenship or immigration status—

"(1) if the entity has provided such eligibility based on a verification of satisfactory immigration status by the Immigration and Naturalization Service,

"(2) because the entity, under subsection (d)(4)(A)(ii), was required to provide a reasonable opportunity to submit documentation,

"(3) because the entity, under subsection (d)(4)(B)(ii), was required to wait for the response of the Immigration and Naturalization Service to the entity's request for official verification of the immigration status of the individual, or

"(4) because of a fair hearing process described in subsection (d)(5)(B).".

(4) UNDER TITLE IV EDUCATIONAL ASSISTANCE.—Section 484 of the Higher Education Act of 1965 (20 U.S.C. 1091) is amended by adding at the end the following new subsections:

"(c) The following conditions apply with respect to an individual's receipt of any grant, loan, or work assistance under this title as a student at an institution of higher education:

"(1)(A) There must be a declaration in writing to the institution by the student, under penalty of perjury, stating whether or not the student is a citizen or national of the United States, and, if the student is not a citizen or national of the United States, that the individual is in a satisfactory immigration status.

"(B) In this subsection, the term 'satisfactory immigration status' means an immigration status which does not make the student ineligible for a grant, loan, or work assistance under this title.

"(2) If the student is not a citizen or national of the United States, there must be presented to the institution either—

"(A) alien registration documentation or other proof of immigration registration from the Immigration and Naturalization Service that contains the individual's alien admission number or alien file number (or numbers if the individual has more than one number), or

"(B) such other documents as the institution determines (in accordance with guidelines of the Secretary) constitutes reasonable evidence indicating a satisfactory immigration status.

"(3) If the documentation described in paragraph (2)(A) is presented, the institution shall utilize the individual's alien file or alien admission number to verify with the Immigration and Naturalization Service the individual's immigration status through an automated or other system (designated by the Service for use with institutions) that—

"(A) utilizes the individual's name, file number, admission number, or other means permitting efficient verification, and

"(B) protects the individual's privacy to the maximum degree possible.

"(4) In the case of such an individual who is not a citizen or national of the United States, if the statement described in paragraph (1) is submitted but the

documentation required under paragraph (2) is not presented or if the documentation required under paragraph (2)(A) is presented but such documentation is not verified under paragraph (3)—

"(A) the institution—

"(i) shall provide a reasonable opportunity to submit to the institution evidence indicating a satisfactory immigration status, and

"(ii) may not delay, deny, reduce, or terminate the individual's eligibility for the grant, loan, or work assistance on the basis of the individual's immigration status until such a reasonable opportunity has been provided; and

"(B) if there are submitted documents which the institution determines constitutes reasonable evidence indicating such status—

"(i) the institution shall transmit to the Immigration and Naturalization Service photostatic or other similar copies of such documents for official verification,

"(ii) pending such verification, the institution may not delay, deny, reduce, or terminate the individual's eligibility for the grant, loan, or work assistance on the basis of the individual's immigration status, and

"(iii) the institution shall not be liable for the consequences of any action, delay, or failure of the Service to conduct such verification.

"(5) If the institution determines, after complying with the requirements of paragraph (4), that such an individual is not in a satisfactory immigration status—

"(A) the institution shall deny or terminate the individual's eligibility for such grant, loan, or work assistance, and

"(B) the applicable fair hearing process shall be made available with respect to the individual.

"(d) The Secretary shall not take any compliance, disallowance, penalty, or other regulatory action against an institution of higher education with respect to any error in the institution's determination to make an student eligible for a grant, loan, or work assistance based on citizenship or immigration status—

"(1) if the institution has provided such eligibility based on a verification of satisfactory immigration status by the Immigration and Naturalization Service,

"(2) because the institution, under subsection (c)(4)(A)(ii), was required to provide a reasonable opportunity to submit documentation,

"(3) because the institution, under subsection (c)(4)(B)(ii), was required to wait for the response of the Immigration and Naturalization Service to the institution's request for official verification of the immigration status of the student, or

"(4) because of a fair hearing process described in subsection (c)(5)(B).".

(b) PROVIDING 100 PERCENT REIMBURSEMENT FOR COSTS OF IMPLEMENTATION AND OPERATION.—

(1) UNDER AFDC PROGRAM.—Section 403(a)(3) of the Social Security Act is amended by inserting before subparagraph (B) the following new subparagraph:

"(A) 100 percent of so much of such expenditures as are for the costs of the implementation and operation of the immigration status verification system described in section 1137(d),".

(2) UNDER MEDICAID PROGRAM.—Section 1903(a) of such Act is amended by inserting after paragraph (3) the following new paragraph:

"(4) an amount equal to 100 percent of the sums expended during the quarter which are attributable to the costs of the implementation and operation of the immigration status verification system described in section 1137(d); plus".

(3) UNDER UNEMPLOYMENT COMPENSATION PROGRAM.—The first sentence of section 302(a) of such Act is amended by inserting before the period at the end the following: ", including 100 percent of so much of the reasonable expenditures of the State as are attributable to the costs of the implementation and operation of the immigration status verification system described in section 1137(d)".

(4) UNDER CERTAIN TERRITORIAL ASSISTANCE PROGRAMS.—Sections 3(a)(4), 1003(a)(3), 1403(a)(3), and 1603(a)(4) of the Social Security Act (as in effect without regard to section 301 of the Social Security Amendments of 1972) are each amended by redesignating subparagraph (B) as subparagraph (C) and inserting after subparagraph (A) the following new subparagraph:

"(B) 100 percent of so much of such expenditures as are for the costs of the implementation and operation of the immigration status verification system described in section 1137(d); plus".

(5) UNDER THE FOOD STAMP PROGRAM.—Section 16 of the Food Stamp Act of 1977 (7 U.S.C. 2025) is amended by adding at the end the following new subsection:

"(h) The Secretary is authorized to pay to each State agency an amount equal to 100 per centum of the costs incurred by the State agency in implementing and operating the immigration status verification system described in section 1137(d) of the Social Security Act.".

(6) UNDER HOUSING ASSISTANCE PROGRAMS.—The United States Housing Act of 1937 (42 U.S.C. 1437 et seq.) is amended by adding at the end the following new section:

"PAYMENT FOR IMPLEMENTATION OF IMMIGRATION STATUS VERIFICATION SYSTEM

"SEC. 20. The Secretary is authorized to pay to each public housing authority an amount equal to 100 percent of the costs incurred by the authority in implementing and operating the immigration status verification system under section 214(c) of the Housing and Community Development Act of 1980 with respect to financial assistance made available pursuant to this Act.".

(c) EFFECTIVE DATES.—

(1) IMMIGRATION AND NATURALIZATION SERVICE ESTABLISHING VERIFICATION SYSTEM BY OCTOBER 1, 1987.—The Commissioner of Immigration and Naturalization shall implement a system for the verification of immigration status under paragraphs (3) and (4)(B)(i) of section 1137(d) of the Social Security Act (as amended by this section) so that the system is available to all the States by not later than October 1, 1987. Such system shall not be used by the Immigration and Naturalization Service for administrative (non-criminal) immigration enforcement purposes and shall be implemented in a manner that provides for verification of immigration status without regard to the sex, color, race, religion, or nationality of the individual involved.

(2) HIGHER MATCHING EFFECTIVE IN FISCAL YEAR 1988.—The amendments made by subsection (b) take effect on October 1, 1987.

(3) USE OF VERIFICATION SYSTEM REQUIRED IN FISCAL YEAR 1989.—The amendments made by subsection (a) take effect on October 1, 1988. States have until that date to begin complying with the requirements imposed by those amendments.

(4) FUNDS AUTHORIZED.—Such sums as may be necessary are authorized for the Immigration and Naturalization Service to carry out the purposes of this section.

TITLE II—LEGALIZATION

SEC. 201. LEGALIZATION OF STATUS.

(a) PROVIDING FOR LEGALIZATION PROGRAM.—Chapter 5 of title II is amended by inserting after section 245 (8 U.S.C. 1255) the following new section:

"ADJUSTMENT OF STATUS OF CERTAIN ENTRANTS BEFORE JANUARY 1, 1982, TO THAT OF PERSON ADMITTED FOR LAWFUL RESIDENCE

"SEC. 245A. (a) TEMPORARY RESIDENT STATUS.—The Attorney General shall adjust the status of an alien to that of an alien lawfully admitted for temporary residence if the alien meets the following requirements:

"(1) ENTRY, PHYSICAL PRESENCE, AND TIMELY APPLICATION.—

"(A) DURING APPLICATION PERIOD.—Except as provided in subparagraph (B), the alien must apply for such adjustment during the 18-month period beginning on a date (not later than 180 days after the date of enactment of this section) designated by the Attorney General.

"(B) APPLICATION WITHIN 30 DAYS OF SHOW-CAUSE ORDER.—An alien who, at any time during the first 17 months of the 18-month period described in subparagraph (A), is the subject of an order to show cause issued under section 242, must make application under this section not later than the end of the 30-day period beginning either on the first day of such 18-month period or on the date of the issuance of such order, whichever day is later.

"(C) TREATMENT OF CERTAIN CUBAN AND HAITIAN ENTRANTS.—For purposes of this subsection, an alien in the status of a Cuban and Haitian entrant described in paragraph (1) or (2)(A) of section 501(e) of Public Law 96-422 shall be considered to have entered the United States and to be in an unlawful status in the United States.

"(2) CONTINUOUS UNLAWFUL RESIDENCE SINCE 1982.—

"(A) IN GENERAL.—The alien must establish that he entered the United States before January 1, 1982, and that he has resided continuously in the United States in an unlawful status since such date and through the date the application is filed under this subsection.

"(B) NONIMMIGRANTS.—In the case of an alien who entered the United States as a nonimmigrant before January 1, 1982, the alien must establish that the alien's period of authorized stay as a nonimmigrant expired before such date through the passage of time or the alien's unlawful status was known to the Government as of such date.

"(C) EXCHANGE VISITORS.—If the alien was at any time a nonimmigrant exchange alien (as defined in section 101(a)(15)(J)), the alien must establish that the alien was not subject to the two-year foreign residence requirement of section 212(e) or has fulfilled that requirement or received a waiver thereof.

"(3) CONTINUOUS PHYSICAL PRESENCE SINCE ENACTMENT.—

"(A) IN GENERAL.—The alien must establish that the alien has been continuously physically present in the United States since the date of the enactment of this section.

"(B) TREATMENT OF BRIEF, CASUAL, AND INNOCENT ABSENCES.—An alien shall not be considered to have failed to maintain continuous physical presence in the United States for purposes of subparagraph (A) by virtue of brief, casual, and innocent absences from the United States.

"(C) ADMISSIONS.—Nothing in this section shall be construed as authorizing an alien to apply for admission to, or to be admitted to, the United States in order to apply for adjustment of status under this subsection.

"(4) ADMISSIBLE AS IMMIGRANT.—The alien must establish that he—

"(A) is admissible to the United States as an immigrant, except as otherwise provided under subsection (d)(2),

"(B) has not been convicted of any felony or of three or more misdemeanors committed in the United States,

"(C) has not assisted in the persecution of any person or persons on account of race, religion, nationality, membership in a particular social group, or political opinion, and

"(D) is registered or registering under the Military Selective Service Act, if the alien is required to be so registered under that Act.

"(b) SUBSEQUENT ADJUSTMENT TO PERMANENT RESIDENCE AND NATURE OF TEMPORARY RESIDENT STATUS.—

"(1) ADJUSTMENT TO PERMANENT RESIDENCE.—The Attorney General shall adjust the status of any alien provided lawful temporary resident status under subsection (a) to that of an alien lawfully admitted for permanent residence if the alien meets the following requirements:

"(A) TIMELY APPLICATION AFTER ONE YEAR'S RESIDENCE.—The alien must apply for such adjustment during the one-year period beginning with the thirteenth month that begins after the date the alien was granted such temporary resident status.

"(B) CONTINUOUS RESIDENCE.—

"(i) IN GENERAL.—The alien must establish that he has continuously resided in the United States since the date the alien was granted such temporary resident status.

"(ii) TREATMENT OF CERTAIN ABSENCES.—An alien shall not be considered to have lost the continuous residence referred to in clause (i) by reason of an absence from the United States permitted under paragraph (3)(A).

"(C) ADMISSIBLE AS IMMIGRANT.—The alien must establish that he—

"(i) is admissible to the United States as an immigrant, except as otherwise provided under subsection (d)(2), and

"(ii) has not been convicted of any felony or three or more misdemeanors committed in the United States.

"(D) BASIC CITIZENSHIP SKILLS.—

"(i) IN GENERAL.—The alien must demonstrate that he either—

"(I) meets the requirements of section 312 (relating to minimal understanding of ordinary English and a knowledge and understanding of the history and government of the United States), or

"(II) is satisfactorily pursuing a course of study (recognized by the Attorney General) to achieve such an understanding of English and such a knowledge and understanding of the history and government of the United States.

"(ii) EXCEPTION FOR ELDERLY INDIVIDUALS.—The Attorney General may, in his discretion, waive all or part of the requirements of clause (i) in the case of an alien who is 65 years of age or older.

"(iii) RELATION TO NATURALIZATION EXAMINATION.—In accordance with regulations of the Attorney General, an alien who has demonstrated under clause (i)(I) that the alien meets the requirements of section 312 may be considered to have satisfied the requirements of that section for purposes of becoming naturalized as a citizen of the United States under title III.

"(2) TERMINATION OF TEMPORARY RESIDENCE.—The Attorney General shall provide for termination of temporary resident status granted an alien under subsection (a)—

"(A) if it appears to the Attorney General that the alien was in fact not eligible for such status;

"(B) if the alien commits an act that (i) makes the alien inadmissible to the United States as an immigrant, except as otherwise provided under subsection (d)(2), or (ii) is convicted of any felony or three or more misdemeanors committed in the United States; or

"(C) at the end of the twenty-fifth month beginning after the date the alien is granted such status, unless the alien has filed an application for adjustment of such status pursuant to paragraph (1) and such application has not been denied.

"(3) AUTHORIZED TRAVEL AND EMPLOYMENT DURING TEMPORARY RESIDENCE.—During the period an alien is in the lawful temporary resident status granted under subsection (a)—

"(A) AUTHORIZATION OF TRAVEL ABROAD.—The Attorney General shall, in accordance with regulations, permit the alien to return to the United States after such brief and casual trips abroad as reflect an intention on the part of the alien to adjust to lawful permanent resident status under paragraph (1) and after brief temporary trips abroad occasioned by a family obligation involving an occurrence such as the illness or death of a close relative or other family need.

"(B) AUTHORIZATION OF EMPLOYMENT.—The Attorney General shall grant the alien authorization to engage in employment in the United States and provide to that alien an 'employment authorized' endorsement or other appropriate work permit.

"(c) APPLICATIONS FOR ADJUSTMENT OF STATUS.—

"(1) TO WHOM MAY BE MADE.—The Attorney General shall provide that applications for adjustment of status under subsection (a) or under subsection (b)(1) may be filed—

"(A) with the Attorney General, or

"(B) with a designated entity (designated under paragraph (2)), but only if the applicant consents to the forwarding of the application to the Attorney General.

"(2) DESIGNATION OF ENTITIES TO RECEIVE APPLICATIONS.—For purposes of receiving applications under this section, the Attorney General—

"(A) shall designate qualified voluntary organizations and other qualified State, local, and community organizations, and

"(B) may designate such other persons as the Attorney General determines are qualified and have substantial experience, demonstrated competence, and traditional long-term involvement in the preparation and submittal of applications for adjustment of status under section 209 or 245, Public Law 89-732, or Public Law 95-145.

"(3) TREATMENT OF APPLICATIONS BY DESIGNATED ENTITIES.—Each designated entity must agree to forward to the Attorney General applications filed with it in accordance with paragraph (1)(B) but not to forward to the Attorney General applications filed with it unless the applicant has consented to such forwarding. No such entity may make a determination required by this section to be made by the Attorney General.

"(4) LIMITATION ON ACCESS TO INFORMATION.—Files and records of designated entities operating under this section are confidential and the Attorney General and the Service shall not have access to such files or records relating to an alien without the consent of the alien.

"(5) CONFIDENTIALITY OF INFORMATION.—Neither the Attorney General, nor any other official or employee of the Department of Justice, or bureau or agency thereof, may—

"(A) use the information furnished pursuant to an application filed under this section for any purpose other than to make a determination on the application or for enforcement of paragraph (6),

"(B) make any public tion whereby the information furnished by any particular individual can be identified, or

"(C) permit anyone other than the sworn officers and employees of the Department or bureau or agency or, with respect to applications filed with a designated entity, that designated entity, to examine individual applications.

Anyone who uses, publishes, or permits information to be examined in violation of this paragraph shall be fined not more than $5,000 or imprisoned not more than five years, or both.

"(6) PENALTIES FOR FALSE STATEMENTS IN APPLICATIONS.—Whoever files an application for adjustment of status under this section and knowingly and willfully falsifies, conceals, or covers up a material fact or makes any false, fictitious, or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious, or fraudulent statement or entry, shall be fined not more than $10,000 or imprisoned not more than five years, or both.

"(d) WAIVER OF NUMERICAL LIMITATIONS AND CERTAIN GROUNDS FOR EXCLUSION.—

"(1) NUMERICAL LIMITATIONS DO NOT APPLY.—The numerical limitations of sections 201 and 202 shall not apply to the adjustment of aliens to lawful permanent resident status under this section.

"(2) WAIVER OF GROUNDS FOR EXCLUSION.—In the determination of an alien's admissibility under subsections (a)(4)(A), (b)(1)(C)(i), and (b)(2)(B)—

"(A) GROUNDS OF EXCLUSION NOT APPLICABLE.—The provisions of paragraphs (14), (20), (21), (25), and (32) of section 212(a) shall not apply.

"(B) WAIVER OF OTHER GROUNDS.—

"(i) IN GENERAL.—Except as provided in clause (ii), the Attorney General may waive any other provision of section 212(a) in the case of individual aliens for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest.

"(ii) GROUNDS THAT MAY NOT BE WAIVED.—The following provisions of section 212(a) may not be waived by the Attorney General under clause (i):

"(I) Paragraphs (9) and (10) (relating to criminals).

"(II) Paragraph (15) (relating to aliens likely to become public charges) insofar as it relates to an application for adjustment to permanent residence.

"(III) Paragraph (23) (relating to drug offenses), except for so much of such paragraph as relates to a single offense of simple possession of 30 grams or less of marihuana.

"(IV) Paragraphs (27), (28), and (29) (relating to national security and members of certain organizations).

"(V) Paragraph (33) (relating to those who assisted in the Nazi persecutions).

"(iii) SPECIAL RULE FOR DETERMINATION OF PUBLIC CHARGE.—An alien is not ineligible for adjustment of status under this section due to being inadmissible under section 212(a)(15) if the alien demonstrates a history of employment in the United States evidencing self-support without reliance on public cash assistance.

"(C) MEDICAL EXAMINATION.—The alien shall be required, at the alien's expense, to meet the same requirements with respect to a medical examination as are required of aliens seeking entry into the United States as immigrants.

"(e) TEMPORARY STAY OF DEPORTATION AND WORK AUTHORIZATION FOR CERTAIN APPLICANTS.—

"(1) BEFORE APPLICATION PERIOD.—The Attorney General shall provide that in the case of an alien who is apprehended before the beginning of the application period described in subsection (a)(1)(A) and who can establish a nonfrivolous case of eligibility to have his status adjusted under subsection (a) (but for the fact that he may not apply for such adjustment until the beginning of such period), until the alien has had the opportunity during the first 30 days of the application period to complete the filing of an application for adjustment, the alien—

"(A) may not be deported, and

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"(B) shall be granted authorization to engage in employment in the United States and be provided an 'employment authorized' endorsement or other appropriate work permit.

"(2) DURING APPLICATION PERIOD.—The Attorney General shall provide that in the case of an alien who presents a nonfrivolous application for adjustment of status under subsection (a) during the application period, and until a final determination on the application has been made in accordance with this section, the alien—

"(A) may not be deported, and

"(B) shall be granted authorization to engage in employment in the United States and be provided an 'employment authorized' endorsement or other appropriate work permit.

"(f) ADMINISTRATIVE AND JUDICIAL REVIEW.—

"(1) ADMINISTRATIVE AND JUDICIAL REVIEW.—There shall be no administrative or judicial review of a determination respecting an application for adjustment of status under this section except in accordance with this subsection.

"(2) ADMINISTRATIVE REVIEW.—

"(A) SINGLE LEVEL OF ADMINISTRATIVE APPELLATE REVIEW.—The Attorney General shall establish an appellate authority to provide for a single level of administrative appellate review of such a determination.

"(B) STANDARD FOR REVIEW.—Such administrative appellate review shall be based solely upon the administrative record established at the time of the determination on the application and upon such additional or newly discovered evidence as may not have been available at the time of the determination.

"(3) JUDICIAL REVIEW.—

"(A) LIMITATION TO REVIEW OF DEPORTATION.—There shall be judicial review of such a denial only in the judicial review of an order of deportation under section 106.

"(B) STANDARD FOR JUDICIAL REVIEW.—Such judicial review shall be based solely upon the administrative record established at the time of the review by the appellate authority and the findings of fact and determinations contained in such record shall be conclusive unless the applicant can establish abuse of discretion or that the findings are directly contrary to clear and convincing facts contained in the record considered as a whole.

"(g) REGULATIONS IMPLEMENTING SECTION.—The Attorney General, after consultation with the Committees on the Judiciary of the House of Representatives and of the Senate and with qualified designated entities, shall prescribe—

"(1) regulations establishing a definition of the term 'resided continuously', as used in this section, and the evidence needed to establish that an alien has resided continuously in the United States for purposes of this section, and

"(2) such other regulations as may be necessary to carry out this section.

Such regulations may be prescribed to take effect on an interim final basis if the Attorney General determines that this is necessary in order to implement this section in a timely manner.

"(h) TEMPORARY DISQUALIFICATION OF NEWLY LEGALIZED ALIENS FROM RECEIVING CERTAIN PUBLIC WELFARE ASSISTANCE.—

"(1) IN GENERAL.—During the five-year period beginning on the date an alien was granted lawful temporary resident status under subsection (a), and notwithstanding any other provision of law—

"(A) except as provided in paragraph (2), the alien is not eligible for—

"(i) any program of financial assistance furnished under Federal law (whether through grant, loan, guarantee, or otherwise) on the basis of financial need, as such programs are identified by the Attorney General in consultation with other appropriate heads of the various departments and agencies of Government,

"(ii) medical assistance under a State plan approved under title XIX of the Social Security Act, and

"(iii) assistance under the Food Stamp Act of 1977; and

"(B) a State or political subdivision therein may, to the extent consistent with subparagraph (A), provide that the alien is not eligible for the programs of financial assistance or for medical assistance described in subparagraph (A)(ii) furnished under the law of that State or political subdivision.

"(2) EXCEPTIONS.—Paragraph (1) shall not apply—

"(A) to a Cuban and Haitian entrant (as defined in paragraph (1) or (2)(A) of section 501(e) of Public Law 96-422, as in effect on April 1, 1983),

"(B) in the case of assistance furnished to an alien who is an aged, blind, or disabled individual (as defined in section 1614(a)(1) of the Social Security Act), or

"(C) in the case of medical assistance (i) for care and services provided to an alien who is under 18 years of age, (ii) for emergency services (as defined for purposes of section 1916(a)(2)(D) of the Social Security Act) or (iii) for services described in section 1916(a)(2)(B) of such Act (relating to services for pregnant women).

"(3) TREATMENT OF CERTAIN PROGRAMS.—Assistance furnished under any of the following provisions of law shall not be construed to be financial assistance described in paragraph (1)(A)(i):

"(A) The National School Lunch Act.

"(B) The Child Nutrition Act of 1966.

"(C) the Vocational Education Act of 1963.

"(D) Chapter 1 of the Education Consolidation and Improvement Act of 1981.

"(E) The Headstart-Follow Through Act.

"(F) The Job Training Partnership Act.

"(G) Subparts 4 and 5 of part A of title IV of the Higher Education Act of 1965.

"(H) The Public Health Service Act.

"(I) Title V of the Social Security Act.

"(4) ADJUSTMENT NOT AFFECTING FASCELL-STONE BENEFITS.—For the purpose of section 501 of the Refugee Education Assistance Act of 1980 (Public Law 96-122), assistance shall be continued under such section with respect to an alien without regard to the alien's adjustment of status under this section.

"(5) MODIFICATION OF MEDICAID REQUIREMENTS.—The eligibility, comparability, and any other State plan requirements of title XIX of the Social Security Act are superseded to the extent required to restrict the medical assistance in the manner described in this subsection. The Secretary of Health and Human Services, in coordination with the Attorney General, shall promulgate regulations in order to carry out this subsection.

"(i) DISSEMINATION OF INFORMATION ON LEGALIZATION PROGRAM.—Beginning not later than the date designated by the Attorney General under subsection (a)(1)(A), the Attorney General, in cooperation with designated entities, shall broadly disseminate in English and other appropriate languages information respecting the benefits which aliens may receive under this section and the requirements to obtain such benefits. Such information shall include—

"(1) information respecting the requirements that aliens with lawful temporary resident status would have to meet to have their status adjusted to permanent resident status under subsection (b)(1) and the facilities available to provide education and employment training and opportunities in order to meet such requirements;

"(2) information on the conditions under which temporary lawful resident status can be rescinded under subsection (b)(2); and

"(3) information on conditions for employment and foreign travel of aliens with lawful temporary resident status under subsection (b)(3).".

(b) TABLE OF CONTENTS AMENDMENT.—The table of contents for chapter 5 of title II is amended by inserting after the item relating to section 245 the following new item:

"Sec. 245A. Adjustment of status of certain entrants before January 1, 1982, to that of person admitted for lawful residence.".

SEC. 202. CUBAN-HAITIAN ADJUSTMENT.

(a) ADJUSTMENT OF STATUS.—The status of any alien described in subsection (b) may be adjusted by the Attorney General, in the Attorney General's discretion and under such regulations as the Attorney General may prescribe, to that of an alien lawfully admitted for permanent residence if—

(1) the alien applies for such adjustment within two years after the date of the enactment of this Act;

(2) the alien is otherwise eligible to receive an immigrant visa and is otherwise admissible to the United States for permanent residence, except in determining such admissibility the grounds for exclusion specified in paragraphs (14), (15), (20), (21), (25), and (32) of section 212(a) of the Immigration and Nationality Act shall not apply;

(3) the alien is not an alien described in section 243(h)(2) of such Act;

(4) the alien is physically present in the United States on the date the application for such adjustment is filed; and

(5) the alien has continuously resided in the United States since January 1, 1982.

(b) ALIENS ELIGIBLE FOR ADJUSTMENT OF STATUS.—The benefits provided by subsection (a) shall apply to any alien—

(1) who has received an immigration designation as a Cuban/Haitian Entrant (Status Pending) as of the date of the enactment of this Act, or

(2) who is a national of Cuba or Haiti, who arrived in the United States before January 1, 1982, with respect to whom any record was established by the Immigration and Naturalization Service before January 1, 1982, and who (unless the alien filed an application for asylum with the Immigration and Naturalization Service before January 1, 1982) was not admitted to the United States as a nonimmigrant.

(c) NO EFFECT ON FASCELL-STONE BENEFITS.—An alien who, as of the date of the enactment of this Act, is a Cuban and Haitian entrant for the purpose of section 501 of Public Law 96-422 shall continue to be considered such an entrant for such purpose without regard to any adjustment of status effected under this section.

(d) RECORD OF PERMANENT RESIDENCE AS OF JANUARY 1, 1982.—Upon approval of an alien's application for adjustment of status under subsection (a), the Attorney General shall establish a record of the alien's admission for permanent residence as of January 1, 1982.

(e) NO OFFSET IN NUMBER OF VISAS AVAILABLE.—When an alien is granted the status of having been lawfully admitted for permanent residence pursuant to this section, the Secretary of State shall not be required to reduce the number of immigrant visas authorized to be issued under the Immigration and Nationality Act and the Attorney General shall not be required to charge the alien any fee.

(f) APPLICATION OF IMMIGRATION AND NATIONALITY ACT PROVISIONS.—Except as otherwise specifically provided in this section, the definitions contained in the Immigration and Nationality Act shall apply in the administration of this section. Nothing contained in this section shall be held to repeal, amend, alter, modify, effect, or restrict the powers, duties, functions, or authority of the Attorney General in the administration and enforcement of such Act or any other law relating to immigration, nationality, or naturalization. The fact that an alien may be eligible to be granted the status of having been lawfully admitted for permanent residence under this section shall not preclude the alien from seeking such status under any other provision of law for which the alien may be eligible.

SEC. 203. UPDATING REGISTRY DATE TO JANUARY 1, 1976.

(a) IN GENERAL.—Section 249 (8 U.S.C. 1259) is amended—

(1) by striking out "JUNE 30, 1948" in the heading and inserting in lieu thereof "JANUARY 1, 1976", and

(2) by striking out "June 30, 1948" in paragraph (a) and inserting in lieu thereof "January 1, 1976".

(b) CONFORMING AMENDMENT TO TABLE OF CONTENTS.—The item in the table of contents relating to section 249 is amended by striking out "June 30, 1948", and inserting in lieu thereof "January 1, 1976".

(c) CLARIFICATION.—The numerical limitations of sections 201 and 202 of the Immigration and Nationality Act shall not apply to aliens provided lawful permanent resident status under section 249 of that Act.

SEC. 204. STATE LEGALIZATION ASSISTANCE.

(a) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out subsections (b) and (c) of this section (including State and local administrative costs) such sums as may be necessary for fiscal year 1987 and for each of the four succeeding fiscal years.

(b) REIMBURSEMENT TO STATES FOR PUBLIC ASSISTANCE FOR ELIGIBLE LEGALIZED ALIENS.—(1) Subject to the amounts provided in advance in appropriation Acts, the Secretary of Health and Human Services shall provide reimbursement to each State (as defined in paragraph (2)(A)) for 100 percent of the costs of programs of public assistance (as defined in paragraph (2)(B)) provided to any eligible legalized alien (as defined in paragraph (2)(C)).

(2) For purposes of this subsection:

(A) The term "State" has the meaning given such term in section 101(a)(36) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(36)).

(B) The term "programs of public assistance" means programs existing in a State or local jurisdiction which—

(i) provide for cash, medical, or other assistance designed to meet the basic subsistence or health needs of individuals or required in the interest of public health,

(ii) are generally available to needy individuals residing in the State or locality, and

(iii) receive funding from units of State or local government.

(C) The term "eligible legalized alien" means an alien who was granted lawful temporary resident status under section 245A(a) of the Immigration and Nationality Act, but only until the end of the five-year period beginning on the date the alien was granted such status.

(c) EDUCATIONAL ASSISTANCE.—Subject to the amounts provided in advance in appropriation Acts and in accordance with this section, the Secretary of Education shall make payments to State educational agencies for the purpose of assisting local educational agencies of that State in providing educational services for eligible legalized aliens (as defined in subsection (b)(2)(C)), but only to the extent such services are otherwise available to those residing in the State.

(d) CONSULTATION IN IMPLEMENTING SECTION.—The Secretary of Health and Human Services and the Secretary of Education shall consult with representatives of State and local governments in establishing regulations and guidelines to carry out this section.

TITLE III—REFORM OF LEGAL IMMIGRATION

PART A—TEMPORARY AGRICULTURAL WORKERS

SEC. 301. H-2A AGRICULTURAL WORKERS.

(a) PROVIDING NEW "H-2A" NONIMMIGRANT CLASSIFICATION FOR TEMPORARY AGRICULTURAL LABOR.—Paragraph (15)(H) of section 101(a) (8 U.S.C. 1101(a)) is amended by striking out "to perform temporary services or labor," in clause (ii) and inserting in lieu thereof "(a) to perform agricultural labor or services, as defined by the Secretary of Labor in regulations and including agricultural labor defined in section 3121(g) of the Internal Revenue Code of 1954 and agriculture as defined in section 3(f) of the Fair Labor Standards Act of 1938 (29 U.S.C. 203(f)), of a temporary or seasonal nature, or (b) to perform other temporary service or labor".

(b) INVOLVEMENT OF DEPARTMENTS OF LABOR AND AGRICULTURE IN H-2A PROGRAM.—Section 214(c) (8 U.S.C. 1184(c)) is amended by adding at the end the following: "For purposes of this subsection with respect to nonimmigrants described in section 101(a)(15)(H)(ii)(a), the term 'appropriate agencies of Government' means the Department of Labor and includes the Department of Agriculture. The provisions of section 216 shall apply to the question of importing any alien as a nonimmigrant under section 101(a)(15)(H)(ii)(a).".

(c) ADMISSION OF H-2A WORKERS.—(1) Chapter 2 of title II is amended by adding after section 215 the following new section:

"ADMISSION OF TEMPORARY H-2A WORKERS

"SEC. 216. (a) CONDITIONS FOR APPROVAL OF H-2A PETITION.—(1) A petition to import an alien as an H-2A worker (as defined in subsection (i)(2)) may not be approved by the Attorney General unless the petitioner has applied to the Secretary of Labor for a certification that—

"(A) there are not sufficient workers who are able, willing, and qualified, and who will be available at the time and place needed, to perform the labor or services involved in the petition, and

"(B) the employment of the alien in such labor or services will not adversely affect the wages and working conditions of workers in the United States similarly employed.

"(2) The Secretary of Labor may require by regulation, as a condition of issuing the certification, the payment of a fee to recover the reasonable costs of processing applications for certification.

"(b) CONDITIONS FOR DENIAL OF LABOR CERTIFICATION.—The Secretary of Labor may not issue a certification under subsection (a) with respect to an employer if the conditions described in that subsection are not met or if any of the following conditions are met:

"(1) There is a strike or lockout in the course of a labor dispute which, under the regulations, precludes such certification.

"(2)(A) The employer during the previous two-year period employed H-2A workers and the Secretary of Labor has determined, after notice and opportunity for a hearing, that the employer at any time during that period substantially

violated a material term or condition of the labor certification with respect to the employment of domestic or nonimmigrant workers.

"(B) No employer may be denied certification under subparagraph (A) for more than three years for any violation described in such subparagraph.

"(3) The employer has not provided the Secretary with satisfactory assurances that if the employment for which the certification is sought is not covered by State workers' compensation law, the employer will provide, at no cost to the worker, insurance covering injury and disease arising out of and in the course of the worker's employment which will provide benefits at least equal to those provided under the State workers' compensation law for comparable employment.

"(4) The Secretary determines that the employer has not made positive recruitment efforts within a multi-state region of traditional or expected labor supply where the Secretary finds that there are a significant number of qualified United States workers who, if recruited, would be willing to make themselves available for work at the time and place needed. Positive recruitment under this paragraph is in addition to, and shall be conducted within the same time period as, the circulation through the interstate employment service system of the employer's job offer. The obligation to engage in positive recruitment under this paragraph shall terminate on the date the H-2A workers depart for the employer's place of employment.

"(c) SPECIAL RULES FOR CONSIDERATION OF APPLICATIONS.—The following rules shall apply in the case of the filing and consideration of an application for a labor certification under this section:

"(1) DEADLINE FOR FILING APPLICATIONS.—The Secretary of Labor may not require that the application be filed more than 60 days before the first date the employer requires the labor or services of the H-2A worker.

"(2) NOTICE WITHIN SEVEN DAYS OF DEFICIENCIES.—(A) The employer shall be notified in writing within seven days of the date of filing if the application does not meet the standards (other than that described in subsection (a)(1)(A)) for approval.

"(B) If the application does not meet such standards, the notice shall include the reasons therefor and the Secretary shall provide an opportunity for the prompt resubmission of a modified application.

"(3) ISSUANCE OF CERTIFICATION.—(A) The Secretary of Labor shall make, not later than 20 days before the date such labor or services are first required to be performed, the certification described in subsection (a)(1) if—

"(i) the employer has complied with the criteria for certification (including criteria for the recruitment of eligible individuals as prescribed by the Secretary), and

"(ii) the employer does not actually have, or has not been provided with referrals of, qualified eligible individuals who have indicated their availability to perform such labor or services on the terms and conditions of a job offer which meets the requirements of the Secretary.

In considering the question of whether a specific qualification is appropriate in a job offer, the Secretary shall apply the normal and accepted qualifications required by non-H-2A-employers in the same or comparable occupations and crops.

"(B)(i) For a period of 3 years subsequent to the effective date of this section, labor certifications shall remain effective only if, from the time the foreign worker departs for the employer's place of employment, the employer will provide employment to any qualified United States worker who applies to the employer until 50 percent of the period of the work contract, under which the foreign worker who is in the job was hired, has elapsed. In addition, the employer will offer to provide benefits, wages and working conditions required pursuant to this section and regulations.

"(ii) The requirement of clause (i) shall not apply to any employer who—

"(I) did not, during any calendar quarter during the preceding calendar year, use more than 500 man-days of agricultural labor, as defined in section 3(u) of the Fair Labor Standards Act of 1938 (29 U.S.C. 203(u)),

"(II) is not a member of an association which has petitioned for certification under this section for its members, and

"(III) has not otherwise associated with other employers who are petitioning for temporary foreign workers under this section.

"(iii) Six months before the end of the 3-year period described in clause (i), the Secretary of Labor shall consider the findings of the report mandated by section 403(a)(4)(D) of the Immigration Control and Legalization Amendments Act of

1986 as well as other relevant materials, including evidence of benefits to United States workers and costs to employers, addressing the advisability of continuing a policy which requires an employer, as a condition for certification under this section, to continue to accept qualified, eligible United States workers for employment after the date the H-2A workers depart for work with the employer. The Secretary's review of such findings and materials shall lead to the issuance of findings in furtherance of the Congressional policy that aliens not be admitted under this section unless there are not sufficient workers in the United States who are able, willing, and qualified to perform the labor or service needed and that the employment of the aliens in such labor or services will not adversely affect the wages and working conditions of workers in the United States similarly employed. In the absence of the enactment of Federal legislation prior to three months before the end of the 3-year period described in clause (i) which addresses the subject matter of this subparagraph, the Secretary shall immediately publish the findings required by this clause, and shall promulgate, on an interim or final basis, regulations based on his findings which shall be effective no later than three years from the effective date of this section.

"(iv) In complying with clause (i) of this subparagraph, an association shall be allowed to refer or transfer workers among its members: *Provided*, That for purposes of this section an association acting as an agent for its members shall not be considered a joint employer merely because of such referral or transfer.

"(v) United States workers referred or transferred pursuant to clause (iv) of this subparagraph shall not be treated disparately.

"(vi) An employer shall not be liable for payments under section 655.202(b)(6) of title 20, Code of Federal Regulations (or any successor regulation) with respect to an H-2A worker who is displaced due to compliance with the requirement of this subparagraph, if the Secretary of Labor certifies that the H-2A worker was displaced because of the employer's compliance with clause (i) of this subparagraph.

"(vii)(I) No person or entity shall willfully and knowingly withhold domestic workers prior to the arrival of H-2A workers in order to force the hiring of domestic workers under clause (i).

"(II) Upon the receipt of a complaint by an employer that a violation of subclause (I) has occurred the Secretary shall immediately investigate. He shall within 36 hours of the receipt of the complaint issue findings concerning the alleged violation. Where the Secretary finds that a violation has occurred, he shall immediately suspend the application of clause (i) of this subparagraph with respect to that certification for that date of need.

"(4) HOUSING.—Employers shall furnish housing in accordance with regulations. The employer shall be permitted at the employer's option to provide housing meeting applicable Federal standards for temporary labor camps or to secure housing which meets the local standards for rental and/or public accommodations or other substantially similar class of habitation: *Provided*, That in the absence of applicable local standards, State standards for rental and/or public accommodations or other substantially similar class of habitation shall be met: *Provided further*, That in the absence of applicable local or State standards, Federal temporary labor camp standards shall apply: *Provided further*, That the Secretary of Labor shall issue regulations which address the specific requirements of housing for employees principally engaged in the range production of livestock: *Provided further*, That when it is the prevailing practice in the area and occupation of intended employment to provide family housing, family housing shall be provided to workers with families who request it: *And provided further*, That nothing in this paragraph shall require an employer to provide or secure housing for workers who are not entitled to it under the temporary labor certification regulations in effect on June 1, 1986.

"(d) ROLES OF AGRICULTURAL ASSOCIATIONS.—

"(1) PERMITTING FILING BY AGRICULTURAL ASSOCIATIONS.—A petition to import an alien as a temporary agricultural worker, and an application for a labor certification with respect to such a worker, may be filed by an association of agricultural producers which use agricultural services.

"(2) TREATMENT OF ASSOCIATIONS ACTING AS EMPLOYERS.—If an association is a joint or sole employer of temporary agricultural workers, the certifications granted under this section to the association may be used for the certified job opportunities of any of its producer members and such workers may be transferred among its producer members to perform agricultural services of a temporary or seasonal nature for which the certifications were granted.

"(3) TREATMENT OF VIOLATIONS.—

"(A) MEMBER'S VIOLATION DOES NOT NECESSARILY DISQUALIFY ASSOCIATION OR OTHER MEMBERS.—If an individual producer member of a joint employer association is determined to have committed an act that under subsection (b)(2) results in the denial of certification with respect to the member, the denial shall apply only to that member of the association unless the Secretary determines that the association or other member participated in, had knowledge of, or reason to know of, the violation.

"(B) ASSOCIATION'S VIOLATION DOES NOT NECESSARILY DISQUALIFY MEMBERS.—(i) If an association representing agricultural producers as a joint employer is determined to have committed an act that under subsection (b)(2) results in the denial of certification with respect to the association, the denial shall apply only to the association and does not apply to any individual producer member of the association unless the Secretary determines that the member participated in, had knowledge of, or reason to know of, the violation.

"(ii) If an association of agricultural producers certified as a sole employer is determined to have committed an act that under subsection (b)(2) results in the denial of certification with respect to the association, no individual producer member of such association may be the beneficiary of the services of temporary alien agricultural workers admitted under this section in the commodity and occupation in which such aliens were employed by the association which was denied certification during the period such denial is in force, unless such producer member employs such aliens in the commodity and occupation in question directly or through an association which is a joint employer of such workers with the producer member.

"(e) EXPEDITED ADMINISTRATIVE APPEALS OF CERTAIN DETERMINATIONS.—(1) Regulations shall provide for an expedited procedure for the review of a denial of certification under subsection (a)(1) or a revocation of such a certification or, at the applicant's request, for a de novo administrative hearing respecting the denial or revocation.

"(2) The Secretary of Labor shall expeditiously, but in no case later than 72 hours after the time a new determination is requested, make a new determination on the request for certification in the case of an H-2A worker if able, willing, and qualified eligible individuals are not actually available at the time such labor or services are required and a certification was denied in whole or in part because of the availability of qualified workers. If the employer asserts that any eligible individual who has been referred is not able, willing, or qualified, the burden of proof is on the employer to establish that the individual referred is not able, willing, or qualified because of employment-related reasons.

"(f) VIOLATORS DISQUALIFIED FOR 5 YEARS.—An alien may not be admitted to the United States as a temporary agricultural worker if the alien was admitted to the United States as such a worker within the previous five-year period and the alien during that period violated a term or condition of such previous admission.

"(g) AUTHORIZATIONS OF APPROPRIATIONS.—(1) There are authorized to be appropriated for each fiscal year, beginning with fiscal year 1987, $10,000,000 for the purposes—

"(A) of recruiting domestic workers for temporary labor and services which might otherwise be performed by nonimmigrants described in section 101(a)(15)(H)(ii)(a), and

"(B) of monitoring terms and conditions under which such nonimmigrants (and domestic workers employed by the same employers) are employed in the United States.

"(2) The Secretary of Labor is authorized to take such actions, including imposing appropriate penalties and seeking appropriate injunctive relief and specific performance of contractual obligations, as may be necessary to assure employer compliance with terms and conditions of employment under this section.

"(3) There are authorized to be appropriated for each fiscal year, beginning with fiscal year 1987, such sums as may be necessary for the purpose of enabling the Secretary of Labor to make determinations and certifications under this section and under section 212(a)(14).

"(4) There are authorized to be appropriated for each fiscal year, beginning with fiscal year 1987, such sums as may be necessary for the purposes of enabling the Secretary of Agriculture to carry out the Secretary's duties and responsibilities under this section.

"(h) MISCELLANEOUS PROVISIONS.—(1) The Attorney General shall provide for such endorsement of entry and exit documents of nonimmigrants described in section

101(a)(15)(H)(ii) as may be necessary to carry out this section and to provide notice for purposes of section 274A.

"(2) The provisions of subsections (a) and (c) of section 214 and the provisions of this section preempt any State or local law regulating admissibility of nonimmigrant workers.

"(i) DEFINITIONS.—For purposes of this section:

"(1) The term 'eligible individual' means, with respect to employment, an individual who is not an unauthorized alien (as defined in section 274A(g)) with respect to that employment.

"(2) The term 'H-2A worker' means a nonimmigrant described in section 101(a)(15)(H)(ii)(a).".

(2) Section 3306(c)(1)(B) of the Internal Revenue Code of 1954 is amended by striking out "before January 1, 1988,".

(d) EFFECTIVE DATE.—The amendments made by this section apply to petitions and applications filed under sections 214(c) and 216 of the Immigration and Nationality Act on or after the first day of the seventh month beginning after the date of the enactment of this Act (hereinafter in this section referred to as the "effective date").

(e) REGULATIONS.—The Attorney General, in consultation with the Secretary of Labor and the Secretary of Agriculture, shall approve all regulations to be issued implementing sections 101(a)(15)(H)(ii)(a) and 216 of the Immigration and Nationality Act. Notwithstanding any other provision of law, final regulations to implement such sections shall first be issued, on an interim or other basis, not later than the effective date.

(f) SENSE OF CONGRESS RESPECTING CONSULTATION WITH MEXICO.—It is the sense of Congress that the President should establish an advisory commission which shall consult with the Governments of Mexico and of other appropriate countries and advise the Attorney General regarding the operation of the alien temporary worker program established under section 216 of the Immigration and Nationality Act.

(g) CONFORMING AMENDMENT TO TABLE OF CONTENTS.—The table of contents is amended by inserting after the item relating to section 215 the following new item:

"Sec. 216. Admission of temporary H-2A workers.".

SEC. 302. PERMANENT RESIDENCE FOR CERTAIN SPECIAL AGRICULTURAL WORKERS.

(a) IN GENERAL.—Chapter 1 of title II is amended by adding at the end the following new section:

"SPECIAL AGRICULTURAL WORKERS

"SEC. 210. (a) PERMANENT RESIDENCE.—The Attorney General shall adjust the status of an alien to that of an alien lawfully admitted for permanent residence if the Attorney General determines that the alien meets the following requirements:

"(1) APPLICATION PERIOD.—The alien must apply for such adjustment during the 18-month period beginning on the first day of the seventh month that begins after the date of enactment of this section.

"(2) PERFORMANCE OF SEASONAL AGRICULTURAL SERVICES.—The alien must establish that he performed seasonal agricultural services in the United States for at least 60 man-days during the 12-month period ending on May 1, 1986. For purposes of the previous sentence, performance of seasonal agricultural services in the United States for more than one employer on any one day shall be counted as performance of services for only 1 man-day.

"(3) ADMISSIBLE AS IMMIGRANT.—The alien must establish that he is admissible to the United States as an immigrant, except as otherwise provided under subsection (c)(2).

"(b) APPLICATIONS FOR ADJUSTMENT OF STATUS.—

"(1) TO WHOM MAY BE MADE.—

"(A) WITHIN THE UNITED STATES.—The Attorney General shall provide that applications for adjustment of status under subsection (a) may be filed—

"(i) with the Attorney General, or

"(ii) with a designated entity (designated under paragraph (2)), but only if the applicant consents to the forwarding of the application to the Attorney General.

"(B) OUTSIDE THE UNITED STATES.—The Attorney General, in cooperation with the Secretary of State, shall provide a procedure whereby an alien may apply for adjustment of status under subsection (a) at an appropriate consular office outside the United States. If the alien otherwise qualifies for such adjustment, the Attorney General shall provide such documentation of

authorization to enter the United States and to have the alien's status adjusted upon entry as may be necessary to carry out the provisions of this section.

"(2) DESIGNATION OF ENTITIES TO RECEIVE APPLICATIONS.—For purposes of receiving applications under this section, the Attorney General—

"(A) shall designate qualified voluntary organizations and other qualified State, local, community, farm labor organizations, and associations of agricultural employers, and

"(B) may designate such other persons as the Attorney General determines are qualified and have substantial experience, demonstrated competence, and traditional long-term involvement in the preparation and submittal of applications for adjustment of status under section 209 or 245, Public Law 89-732, or Public Law 95-145.

"(3) PROOF OF ELIGIBILITY.—An alien may establish that he meets the requirement of subsection (a)(2) through government employment records, records supplied by employers or collective bargaining organizations, and such other reliable documentation as the alien may provide. The Attorney General shall establish special procedures to credit properly work in cases in which an alien was employed under an assumed name.

"(4) TREATMENT OF APPLICATIONS BY DESIGNATED ENTITIES.—Each designated entity must agree to forward to the Attorney General applications filed with it in accordance with paragraph (1)(A)(ii) but not to forward to the Attorney General applications filed with it unless the applicant has consented to such forwarding. No such entity may make a determination required by this section to be made by the Attorney General.

"(5) LIMITATION ON ACCESS TO INFORMATION.—Files and records prepared for purposes of this section by designated entities operating under this section are confidential and the Attorney General and the Service shall not have access to such files or records relating to an alien without the consent of the alien.

"(6) CONFIDENTIALITY OF INFORMATION.—Neither the Attorney General, nor any other official or employee of the Department of Justice, or bureau or agency thereof, may—

"(A) use the information furnished pursuant to an application filed under this section for any purpose other than to make a determination on the application or for enforcement of paragraph (7),

"(B) make any publication whereby the information furnished by any particular individual can be identified, or

"(C) permit anyone other than the sworn officers and employees of the Department or bureau or agency or, with respect to applications filed with a designated entity, that designated entity, to examine individual applications.

Anyone who uses, publishes, or permits information to be examined in violation of this paragraph shall be fined in accordance with title 18, United States Code, or imprisoned not more than five years, or both.

"(7) PENALTIES FOR FALSE STATEMENTS IN APPLICATIONS.—

"(A) CRIMINAL PENALTY.—Whoever—

"(i) files an application for adjustment of status under this section and knowingly and willfully falsifies, conceals, or covers up a material fact or makes any false, fictitious, or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious, or fraudulent statement or entry, or

"(ii) creates or supplies a false writing or document for use in making such an application,

shall be fined in accordance with title 18, United States Code, or imprisoned not more than five years, or both.

"(B) EXCLUSION.—An alien who is convicted of a crime under subparagraph (A) shall be considered to be inadmissible to the United States on the ground described in section 212(a)(19).

"(c) WAIVER OF NUMERICAL LIMITATIONS AND CERTAIN GROUNDS FOR EXCLUSION.—

"(1) NUMERICAL LIMITATIONS DO NOT APPLY.—The numerical limitations of section 201 and 202 shall not apply to the adjustment of aliens to lawful permanent resident status under this section.

"(2) WAIVER OF GROUNDS FOR EXCLUSION.—In the determination of an alien's admissibility under subsection (a)(3)—

"(A) GROUNDS OF EXCLUSION NOT APPLICABLE.—The provisions of paragraphs (14), (20), (21), (25), and (32) of section 212(a) shall not apply.

"(B) WAIVER OF OTHER GROUNDS.—

"(i) IN GENERAL.—Except as provided in clause (ii), the Attorney General may waive any other provision of section 212(a) in the case of individual aliens for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest.

"(ii) GROUNDS THAT MAY NOT BE WAIVED.—The following provisions of section 212(a) may not be waived by the Attorney General under clause (i):

"(I) Paragraph (9) and (10) (relating to criminals).

"(II) Paragraph (15) (relating to aliens likely to become public charges).

"(III) Paragraph (23) (relating to drug offenses), except for so much of such paragraph as relates to a single offense of simple possession of 30 grams or less of marihuana.

"(IV) Paragraphs (27), (28), and (29) (relating to national security and members of certain organizations).

"(V) Paragraph (33) (relating to those who assisted in the Nazi persecutions).

"(C) SPECIAL RULE FOR DETERMINATION OF PUBLIC CHARGE.—An alien is not ineligible for adjustment of status under this section due to being inadmissible under section 212(a)(15) if the alien demonstrates a history of employment in the United States evidencing self-support without reliance on public cash assistance.

"(d) TEMPORARY STAY OF EXCLUSION OR DEPORTATION AND WORK AUTHORIZATION FOR CERTAIN APPLICANTS.—

"(1) BEFORE APPLICATION PERIOD.—The Attorney General shall provide that in the case of an alien who is apprehended before the beginning of the application period described in subsection (a)(1) and who can establish a nonfrivolous case of eligibility to have his status adjusted under subsection (a) (but for the fact that he may not apply for such adjustment until the beginning of such period), until the alien has had the opportunity during the first 30 days of the application period to complete the filing of an application for adjustment, the alien—

"(A) may not be excluded or deported, and

"(B) shall be granted authorization to engage in employment in the United States and be provided an 'employment authorized' endorsement or other appropriate work permit.

"(2) DURING APPLICATION PERIOD.—The Attorney General shall provide that in the case of an alien who presents a nonfrivolous application for adjustment of status under subsection (a) during the application period, and until a final determination on the application has been made in accordance with this section, the alien—

"(A) may not be excluded or deported, and

"(B) shall be granted authorization to engage in employment in the United States and be provided an 'employment authorized' endorsement or other appropriate work permit.

"(e) ADMINISTRATIVE AND JUDICIAL REVIEW.—

"(1) ADMINISTRATIVE AND JUDICIAL REVIEW.—There shall be no administrative or judicial review of a determination respecting an application for adjustment of status under this section except in accordance with this subsection.

"(2) ADMINISTRATIVE REVIEW.—

"(A) SINGLE LEVEL OF ADMINISTRATIVE APPELLATE REVIEW.—The Attorney General shall establish an appellate authority to provide for a single level of administrative appellate review of such a determination.

"(B) STANDARD FOR REVIEW.—Such administrative appellate review shall be based solely upon the administrative record established at the time of the determination on the application and upon such additional or newly discovered evidence as may not have been available at the time of the determination.

"(3) JUDICIAL REVIEW.—

"(A) LIMITATION TO REVIEW OF EXCLUSION OR DEPORTATION.—There shall be judicial review of such a denial only in the judicial review of an order of exclusion or deportation under section 106.

"(B) STANDARD FOR JUDICIAL REVIEW.—Such judicial review shall be based solely upon the administrative record established at the time of the review by the appellate authority and the findings of fact and determinations contained in such record shall be conclusive unless the applicant can establish

abuse of discretion or that the findings are directly contrary to clear and convincing facts contained in the record considered as a whole.

"(f) TREATMENT OF SPECIAL AGRICULTURAL WORKERS.—For all purposes an alien whose status is adjusted under this section to that of an alien lawfully admitted for permanent residence, such status not having changed, shall be considered to be an alien lawfully admitted for permanent residence (within the meaning of section 101(a)(20)).

"(g) SEASONAL AGRICULTURAL SERVICES DEFINED.—In this section, the term 'seasonal agricultural services' means the performance of field work related to planting, cultural practices, cultivating, growing and harvesting of fruits and vegetables of every kind and other perishable commodities, as defined in regulations by the Secretary of Agriculture.".

(b) CLERICAL AMENDMENT.—The table of contents is amended by inserting after the item relating to section 209 the following new item:

"Sec. 210. Special agricultural workers.".

SEC. 303. DETERMINATIONS OF AGRICULTURAL LABOR SHORTAGES AND ADMISSION OF ADDITIONAL SPECIAL AGRICULTURAL WORKERS.

(a) IN GENERAL.—Chapter 1 of title II is amended by adding after section 210 (added by section 302 of this title) the following new section:

"DETERMINATION OF AGRICULTURAL LABOR SHORTAGES AND ADMISSION OF ADDITIONAL SPECIAL AGRICULTURAL WORKERS

"SEC. 210A. (a) DETERMINATION OF NEED TO ADMIT ADDITIONAL SPECIAL AGRICULTURAL WORKERS.—

"(1) IN GENERAL.—Before the beginning of each fiscal year (beginning with fiscal year 1990), the Secretaries of Labor and Agriculture (in this section referred to as the 'Secretaries') shall jointly determine the number (if any) of additional aliens who should be admitted to the United States or who should otherwise acquire the status of aliens lawfully admitted for permanent residence under this section during the fiscal year to meet a shortage of workers to perform seasonal agricultural services in the United States during the year. Such number is, in this section, referred to as the 'shortage number'.

"(2) OVERALL DETERMINATION.—The shortage number is—

"(A) the anticipated need for special agricultural workers (as determined under paragraph (3)) for the fiscal year, minus

"(B) the supply of such workers (as determined under paragraph (4)) for that year,

divided by the factor (determined under paragraph (5)) for man-days per worker.

"(3) DETERMINATION OF NEED.—For purposes of paragraph (2)(A), the anticipated need for special agricultural workers for a fiscal year is determined as follows:

"(A) BASE.—The Secretaries shall jointly estimate, using statistically valid methods, the number of man-days of labor performed in seasonal agricultural services in the United States in the previous fiscal year.

"(B) ADJUSTMENT FOR CROP LOSSES AND CHANGES IN INDUSTRY.—The Secretaries shall jointly—

"(i) increase such number by the number of man-days of labor in seasonal agricultural services in the United States that would have been needed in the previous fiscal year to avoid any crop damage or other loss that resulted from the unavailability of labor, and

"(ii) adjust such number to take into account the projected growth or contraction in the requirements for seasonal agricultural services as a result of—

"(I) growth or contraction in the seasonal agriculture industry, and

"(II) the use of technologies and personnel practices that affect the need for, and retention of, workers to perform such services.

"(4) DETERMINATION OF SUPPLY.—For purposes of paragraph (2)(B), the anticipated supply of special agricultural workers for a fiscal year is determined as follows:

"(A) BASE.—The Secretaries shall use the number estimated under paragraph (3)(A).

"(B) ADJUSTMENT FOR RETIREMENTS AND INCREASED RECRUITMENT.—The Secretaries shall jointly—

"(i) decrease such number by the number of man-days of labor in seasonal agricultural services in the United States that will be lost due to retirement and movement of workers out of performance of seasonal agricultural services, and

"(ii) increase such number by the number of additional man-days of labor in seasonal agricultural services in the United States that can reasonably be expected to result from the availability of able, willing, qualified, and unemployed special agricultural workers, rural low skill, or manual, laborers, and domestic agricultural workers.

"(C) BASES FOR INCREASED NUMBER.—In making the adjustment under subparagraph (B)(ii), the Secretaries shall consider—

"(i) the effect, if any, that improvements in wages and working conditions offered by employers will have on the availability of workers to perform seasonal agricultural services, taking into account the adverse effect, if any, of such improvements in wages and working conditions on the economic competitiveness of the perishable agricultural industry,

"(ii) the effect, if any, of enhanced recruitment efforts by the employers of such workers and government employment services in the traditional and expected areas of supply of such workers, and

"(iii) the number of able, willing and qualified individuals who apply for employment opportunities in seasonal agricultural services listed with offices of government employment services.

"(D) CONSTRUCTION.—Nothing in this subsection shall be deemed to require any individual employer to pay any specified level of wages, to provide any specified working conditions, or to provide for any specified recruitment of workers.

"(5) DETERMINATION OF MAN-DAY PER WORKER FACTOR.—

"(A) FISCAL YEAR 1990.—For fiscal year 1990—

"(i) IN GENERAL.—Subject to clause (ii), for purposes of paragraph (2) the factor under this paragraph is the average number, as determined by the Director of the Bureau of the Census under subsection (b)(3)(A)(ii), of man-days of seasonal agricultural services performed in the United States in fiscal year 1989 by special agricultural workers whose status is adjusted under section 210 and who performed seasonal agricultural services in the United States at any time during the fiscal year.

"(ii) LACK OF ADEQUATE INFORMATION.—If the Director determines that—

"(I) the information reported under subsection (b)(2)(A) is not adequate to make a reasonable determination of the average number described in clause (i), but

"(II) the inadequacy of the information is not due to the refusal or failure of employers to report the information required under subsection (b)(2)(A),

the factor under this paragraph is 80.

"(B) FISCAL YEAR 1991.—For purposes of paragraph (2) for fiscal year 1991, the factor under this paragraph is the average number, as determined by the Director of the Bureau of the Census under subsection (b)(3)(A)(ii), of man-days of seasonal agricultural services performed in the United States in fiscal year 1990 by special agricultural workers who obtained lawful permanent resident status under this section.

"(C) FISCAL YEAR 1992 AND THEREAFTER.—For purposes of paragraph (2) for fiscal year 1992 and each fiscal year thereafter, the factor under this paragraph is the average number, as determined by the Director of the Bureau of the Census under subsection (b)(3)(A)(ii), of man-days of seasonal agricultural services performed in the United States in each of the two previous fiscal years by special agricultural workers who obtained lawful permanent resident status under this section during either of such fiscal years.

"(6) EMERGENCY PROCEDURE FOR INCREASE IN SHORTAGE NUMBER.—

"(A) REQUESTS.—After the beginning of a fiscal year, a group or association representing employers (and potential employers) of individuals who perform seasonal agricultural services may request the Secretaries to increase the shortage number for the fiscal year based upon a showing that extraordinary, unusual, and unforeseen circumstances have resulted in a significant increase in the shortage number due to (i) a significant increase in the need for special agricultural workers in the year, (ii) a significant

decrease in the availability of able, willing, and qualified workers to perform seasonal agricultural services, or (iii) a significant decrease (below the factor used for purposes of paragraph (5)) in the number of man-days of seasonal agricultural services performed by aliens who were recently admitted (or whose status was recently adjusted) under this section.

"(B) NOTICE OF EMERGENCY PROCEDURE.—Not later than 3 days after the date the Secretaries receive a request under subparagraph (A), the Secretaries shall provide for notice in the Federal Register of the substance of the request and shall provide an opportunity for interested parties to submit information to the Secretaries on a timely basis respecting the request.

"(C) PROMPT DETERMINATION ON REQUEST.—The Secretaries, not later than 21 days after the date of the receipt of such a request and after consideration of any information submitted on a timely basis with respect to the request, shall make and publish in the Federal Register their determination on the request. The request shall be granted, and the shortage number for the fiscal year shall be increased, to the extent that the Secretaries determine that such an increase is justified based upon the showing and circumstances described in subparagraph (A) and that such an increase takes into account reasonable recruitment efforts having been undertaken.

"(7) PROCEDURE FOR DECREASING MAN-DAYS OF SEASONAL AGRICULTURAL SERVICES REQUIRED IN THE CASE OF OVER-SUPPLY OF WORKERS.—

"(A) REQUESTS.—After the beginning of a fiscal year, a group of special agricultural workers may request the Secretaries to decrease the number of man-days required under subparagraphs (A) and (B) of subsection (d)(2) with respect to the fiscal year based upon a showing that extraordinary, unusual, and unforeseen circumstances have resulted in a significant decrease in the shortage number due to (i) a significant decrease in the need for special agricultural workers in the year, (ii) a significant increase in the availability of able, willing, and qualified workers to perform seasonal agricultural services, or (iii) a significant increase (above the factor used for purposes of paragraph (5)) in the number of man-days of seasonal agricultural services performed by aliens who were recently admitted (or whose status was recently adjusted) under this section.

"(B) NOTICE OF REQUEST.—Not later than 3 days after the date the Secretaries receive a request under subparagraph (A), the Secretaries shall provide for notice in the Federal Register of the substance of the request and shall provide an opportunity for interested parties to submit information to the Secretaries on a timely basis respecting the request.

"(C) DETERMINATION ON REQUEST.—The Secretaries, before the end of the fiscal year involved and after consideration of any information submitted on a timely basis with respect to the request, shall make and publish in the Federal Register their determination on the request. The request shall be granted, and the number of man-days specified in subparagraphs (A) and (B) of subsection (d)(2) for the fiscal year shall be reduced by the same proportion as the Secretaries determine that a decrease in the shortage number is justified based upon the showing and circumstances described in subparagraph (A).

"(b) NUMERICAL LIMITATION ON ADMISSION OF ADDITIONAL SPECIAL AGRICULTURAL WORKERS.—

"(1) NUMERICAL LIMITATION.—

"(A) FISCAL YEAR 1990.—The numerical limitation on the number of aliens who may be admitted under subsection (c)(1) or who otherwise may acquire lawful permanent residence under such subsection for fiscal year 1990 is—

"(i) 95 percent of the number of individuals whose status was adjusted under section 210(a), minus

"(ii) the number determined under paragraph (3)(A) for fiscal year 1989 (as adjusted in accordance with subparagraph (D)).

"(B) FISCAL YEARS 1991, 1992, 1993, AND 1994.—The numerical limitation on the number of aliens who may be admitted under subsection (c)(1) or who otherwise may acquire lawful permanent residence under such subsection for fiscal year 1991, 1992, 1993, or 1994, is—

"(i) 90 percent of the number described in this clause for the previous fiscal year (or, for fiscal year 1991, the number described in subparagraph (A)(i)), minus

"(ii) the number determined under paragraph (3)(A) for the previous fiscal year (as adjusted in accordance with subparagraph (D)).

"(C) FISCAL YEARS AFTER 1994.—The numerical limitation on the number of aliens who may be admitted under subsection (c)(1) or who otherwise may acquire lawful permanent residence under such subsection for a fiscal year after fiscal year 1994 is—

"(i) 95 percent of the number described in this clause for the previous fiscal year (or, for fiscal year 1995, the number described in subparagraph (B)(i)), minus

"(ii) the number determined under paragraph (3)(A)(i) for the previous fiscal year (as adjusted in accordance with subparagraph (D)).

"(D) ADJUSTMENT TO TAKE INTO ACCOUNT CHANGE IN NUMBER OF H–2 AGRICULTURAL WORKERS.—The number used under subparagraph (A)(ii), (B)(ii), or (C)(ii) (as the case may be) shall be increased or decreased to reflect any numerical increase or decrease, respectively, in the number of aliens admitted to perform temporary seasonal agricultural services (as defined in subsection (f)(2)) under section 101(a)(15)(H)(ii)(a) in the fiscal year compared to such number in the previous fiscal year.

"(2) REPORTING OF INFORMATION ON EMPLOYMENT.—In the case of a person or entity who employs, during a fiscal year in seasonal agricultural services, a special agricultural worker—

"(A) whose status was adjusted under section 210, the person or entity shall furnish the Director of the Bureau of the Census with a certificate (at a time and in a form approved by the Attorney General) of the number of man-days of employment performed by the alien in seasonal agricultural services during the fiscal year, or

"(B) who was admitted or whose status was adjusted under this section, the person or entity shall furnish the alien and the Director with a certificate (at a time and in a form approved by the Attorney General) of the number of man-days of employment performed by the alien in seasonal agricultural services during the fiscal year.

"(3) ANNUAL DETERMINATION OF EMPLOYMENT OF SPECIAL AGRICULTURAL WORKERS.—

"(A) IN GENERAL.—The Director of the Bureau of the Census shall, before the end of each fiscal year (beginning with fiscal year 1989), determine—

"(i) the number of special agricultural workers who have performed seasonal agricultural services in the United States at any time during the fiscal year, and

"(ii) for purposes of subsection (a)(5), the average number of man-days of such services certain of such workers have performed in the United States during the fiscal year.

"(B) BASIS FOR DETERMINATIONS.—Subject to subparagraph (C), such determinations shall be based on the certifications furnished to the Director under paragraph (2).

"(C) ADJUSTMENT FOR UNDERREPORTING AND DUPLICATE REPORTING.—The Director shall adjust the number otherwise determined so as to take into account the underreporting or duplicate reporting of special agricultural workers who have performed seasonal agricultural services at any time during the fiscal year. The Director shall periodically conduct appropriate surveys, of agricultural employers and others, to ascertain the extent of such underreporting or duplicate reporting.

"(c) ADMISSION OF ADDITIONAL SPECIAL AGRICULTURAL WORKERS.—

"(1) IN GENERAL.—Notwithstanding the numerical limitations under section 201 or the provisions of sections 202, 203, or 204, the number of aliens who may be issued visas or who otherwise may acquire the status of an alien lawfully admitted for permanent residence under this section in a fiscal year is equal to the shortage number (determined under subsection (a)) for the fiscal year, or, if less, the numerical limitation established under subsection (b)(1) for the fiscal year.

"(2) ALLOCATION OF VISAS.—The Attorney General shall, in consultation with the Secretary of State, provide such process as may be appropriate for aliens to petition for immigrant visas or to adjust status to become aliens lawfully admitted for permanent residence under this subsection. Such process shall provide special consideration for aliens who have been continuously residing in the United States since May 1, 1986. No alien may be issued a visa as an alien to be admitted under this subsection or may have the alien's status adjusted under

this subsection unless the alien has had a petition approved under this paragraph.

"(d) RIGHTS OF ALIENS ADMITTED OR ADJUSTED UNDER THIS SECTION.—

"(1) IN GENERAL.—Except as otherwise provided in this subsection, an alien who acquires the status of an alien lawfully admitted for permanent residence under subsection (c), such status not having changed, is considered to be an alien lawfully admitted for permanent residence (as described in section 101(a)(20)).

"(2) EMPLOYMENT IN SEASONAL AGRICULTURAL SERVICES REQUIRED.—

"(A) FOR 2 YEARS TO AVOID DEPORTATION.—In order to meet the requirement of this paragraph (for purposes of section 241(a)(20)), an alien, who has obtained the status of an alien lawfully admitted for permanent residence under this section, must establish to the Attorney General that the alien has performed 60 man-days of seasonal agricultural services—

"(i) during the one-year period beginning on the date the alien obtained such status, and

"(ii) during the one-year period beginning one year after the date the alien obtained such status.

"(B) FOR 5 YEARS FOR NATURALIZATION.—Notwithstanding any provision in title III, an alien admitted under this section may not be naturalized as a citizen of the United States under that title unless the alien has performed 60 man-days of seasonal agricultural services in each of 5 fiscal years (not including any fiscal year before the fiscal year in which the alien was admitted under this section).

"(C) PROOF.—In meeting the requirements of subparagraphs (A) and (B), an alien may submit such documentation as may be submitted under section 210(b)(3).

"(D) ADJUSTMENT OF NUMBER OF MAN-DAYS REQUIRED.—The number of man-days specified in subparagraphs (A) and (B) are subject to adjustment under subsection (a)(7).

"(e) TERMS OF EMPLOYMENT RESPECTING ALIENS ADMITTED UNDER THIS SECTION.—

"(1) EQUAL TRANSPORTATION FOR DOMESTIC WORKERS.—If a person employs an alien, who was admitted or whose status is adjusted under subsection (c), in the performance of seasonal agricultural services and provides transportation arrangements or assistance for such workers, the employer must provide the same transportation arrangements or assistance (generally comparable in expense and scope) for other individuals employed in the performance of seasonal agricultural services.

"(2) PROHIBITION OF FALSE INFORMATION BY CERTAIN EMPLOYERS.—A farm labor contractor, agricultural employer, or agricultural association who is an exempt person (as defined in paragraph (5)) shall not knowingly provide false or misleading information to an alien who was admitted or whose status was adjusted under subsection (c) concerning the terms, conditions, or existence of agricultural employment (described in subsection (a), (b), or (c) of section 301 of MASAWPA).

"(3) PROHIBITION OF DISCRIMINATION BY CERTAIN EMPLOYERS.—In the case of an exempt person and with respect to aliens who have been admitted or whose status has been adjusted under subsection (c), the provisions of section 505 of MASAWPA shall apply to any proceeding under or related to (and rights and protections afforded by) this section in the same manner as they apply to proceedings under or related to (and rights and protections afforded by) MASAWPA.

"(4) ENFORCEMENT.—If a person or entity—

"(A) fails to furnish a certificate required under subsection (b)(2) or furnishes false statement of a material fact in such a certificate,

"(B) violates paragraph (1) or (2), or

"(C) violates the provisions of section 505(a) of MASAWPA (as they apply under paragraph (3)),

the person or entity is subject to a civil money penalty under section 503 of MASAWPA in the same manner as if the person or entity had committed a violation of MASAWPA.

"(5) SPECIAL DEFINITIONS.—In this subsection:

"(A) MASAWPA.—The term 'MASAWPA' means the Migrant and Seasonal Agricultural Worker Protection Act (Public Law 97-470).

"(B) The term 'exempt person' means a person or entity who would be subject to the provisions of MASAWPA but for paragraph (1) or (2), or both, of section 4(a) of MASAWPA.

"(f) GENERAL DEFINITIONS.—In this section:

"(1) The term 'special agricultural worker' means an individual, regardless of present status, whose status was at any time adjusted under section 210 or who at any time was admitted or had the individual's status adjusted under subsection (c).

"(2) The term 'seasonal agricultural services' has the meaning given such term in section 210(g).

"(3) The term 'Director' refers to the Director of the Bureau of the Census.".

(b) DEPORTATION OF CERTAIN WORKERS WHO FAIL TO PERFORM SEASONAL AGRICULTURAL SERVICES.—Section 241(a) (8 U.S.C. 1251(a)) is amended—

(1) by striking out "or" at the end of paragraph (18),

(2) by striking out the period at the end of paragraph (19) and inserting in lieu thereof "; or", and

(3) by adding at the end the following new paragraph:

"(20) obtains the status of an alien who becomes lawfully admitted for permanent residence under section 210A and fails to meet the requirement of section 210A(d)(3)(A) by the end of the applicable period.".

(c) APPLICATION OF CERTAIN STATE ASSISTANCE PROVISIONS.—For purposes of section 204 of this Act (relating to State legalization assistance), the term "eligible legalized alien" includes an alien who becomes an alien lawfully admitted for permanent residence under section 210 or 210A of the Immigration and Nationality Act, but only until the end of the 5-year period beginning on the date the alien was first granted permanent resident status.

(d) CLERICAL AMENDMENT.—The table of contents is amended by inserting after the item relating to section 210 (as inserted by section 302) the following new item:

"Sec. 210A. Determination of agricultural labor shortages and admission of additional special agricultural workers.".

SEC. 304. COMMISSION ON AGRICULTURAL WORKERS.

(a) ESTABLISHMENT AND COMPOSITION OF COMMISSION.—(1) There is established a Commission on Agricultural Workers (hereinafter in this section referred to as the "Commission"), to be composed of 12 members—

(A) six to be appointed by the President,

(B) three to be appointed by the Speaker of the House of Representatives, and

(C) three to be appointed by the President pro tempore of the Senate.

(2) In making appointments under paragraph (1)(A), the President shall consult—

(A) with the Attorney General in appointing two members,

(B) with the Secretary of Labor in appointing two members, and

(C) with the Secretary of Agriculture in appointing two members.

(3) A vacancy in the Commission shall be filled in the same manner in which the original appointment was made.

(4) Members shall be appointed to serve for the life of the Commission.

(b) FUNCTIONS OF COMMISSION.—(1) The Commission shall review the following:

(A) The impact of the special agricultural worker provisions on the wages and working conditions of domestic farmworkers, on the adequacy of the supply of agricultural labor, and on the ability of agricultural workers to organize.

(B) The extent to which aliens who have obtained lawful permanent resident status under the special agricultural worker provisions continue to perform seasonal agricultural services and the requirement that aliens who become special agricultural workers under section 210A of the Immigration and Nationality Act perform 60 man-days of seasonal agricultural services for certain periods in order to avoid deportation or to become naturalized.

(C) The impact of the legalization program and the employers' sanctions on the supply of agricultural labor.

(D) The extent to which the agricultural industry relies on the employment of a temporary workforce.

(E) The adequacy of the supply of agricultural labor in the United States and whether this supply needs to be further supplemented with foreign labor and the appropriateness of the numerical limitation on additional special agricultural workers imposed under section 210A(b) of the Immigration and Nationality Act.

(F) The extent of unemployment and underemployment of farmworkers who are United States citizens or aliens lawfully admitted for permanent residence.

(G) The extent to which the problems of agricultural employers in securing labor are related to the lack of modern labor-management techniques in agriculture.

(H) Whether certain geographic regions need special programs or provisions to meet their unique needs for agricultural labor.

(I) Impact of the special agricultural worker provisions on the ability of crops harvested in the United States to compete in international markets.

(2) The Commission shall conduct an overall evaluation of the special agricultural worker provisions, including the process for determining whether or not an agricultural labor shortage exists.

(c) REPORT TO CONGRESS.—The Commission shall report to the Congress not later than five years after the the date of the enactment of this Act on its reviews under subsection (b). The Commission shall include in its report recommendations for appropriate changes that should be made in the special agricultural worker provisions.

(d) COMPENSATION OF MEMBERS.—(1) Each member of the Commission who is not an officer or employee of the Federal Government is entitled to receive, subject to such amounts as are provided in advance in appropriations Acts, the daily equivalent of the minimum annual rate of basic pay in effect for grade GS–18 of the General Schedule for each day (including traveltime) during which the member is engaged in the actual performance of duties of the Commission. Each member of the Commission who is such an officer or employee shall serve without additional pay.

(2) While away from their homes or regular places of business in the performance of services for the Commission, members of the Commission shall be allowed travel expenses, including per diem in lieu of subsistence.

(e) MEETINGS OF COMMISSION.—(1) Five members of the Commission shall constitute a quorum, but a lesser number may hold hearings.

(2) The Chairman and the Vice Chairman of the Commission shall be elected by the members of the Commission for the life of the Commission.

(3) The Commission shall meet at the call of the Chairman or a majority of its members.

(f) STAFF.—(1) The Chairman, in accordance with rules agreed upon by the Commission, may appoint and fix the compensation of a staff director and such other additional personnel as may be necessary to enable the Commission to carry out its functions, without regard to the laws, rules, and regulations governing appointment in the competitive service. Any Federal employee subject to those laws, rules, and regulations may be detailed to the Commission without reimbursement, and such detail shall be without interruption or loss of civil service status or privilege.

(2) The Commission may procure temporary and intermittent services under section 3109(b) of title 5, United States Code, but at rates for individuals not to exceed the daily equivalent of the minimum annual rate of basic pay payable for GS–18 of the General Schedule.

(g) AUTHORITY OF COMMISSION.—(1) The Commission may for the purpose of carrying out this section, hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence as the Commission considers appropriate.

(2) The Commission may secure directly from any department or agency of the United States information necessary to enable it to carry out this section. Upon request of the Chairman, the head of such department or agency shall furnish such information to the Commission.

(3) The Commission may accept, use, and dispose of gifts or donations of services or property.

(4) The Commission may use the United States mails in the same manner and under the same conditions as other departments and agencies of the United States.

(5) The Administrator of General Services shall provide to the Commission on a reimbursable basis such administrative support services as the Commission may request.

(h) AUTHORIZATION OF APPROPRIATIONS.—(1) There are authorized to be appropriated such sums as may be necessary to carry out the purposes of this section.

(2) Notwithstanding any other provision of this section, the authority to make payments, or to enter into contracts, under this section shall be effective only to such extent, or in such amounts, as are provided in advance in appropriations Acts.

(i) TERMINATION DATE.—The Commission shall cease to exist at the end of the 63-month period beginning with the month after the month in which this Act is enacted.

(j) DEFINITIONS.—In this section:

(1) The term "employer sanctions" means the provisions of section 274A of the Immigration and Nationality Act.

(2) The term "legalization program" refers to the provisions of section 245A of the Immigration and Nationality Act.

(3) The term "seasonal agricultural services" has the meaning given such term in section 210(g) of the Immigration and Nationality Act.

(4) The term "special agricultural worker provisions" refers to sections 210 and 210A of the Immigration and Nationality Act.

SEC. 305. ELIGIBILITY OF CERTAIN AGRICULTURAL WORKERS FOR LEGAL ASSISTANCE.

A nonimmigrant worker admitted to or permitted to remain in the United States for agricultural labor or service shall be considered to be an alien described in section 101(a)(20) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(20)) for purposes of establishing eligibility for legal assistance under the Legal Services Corporation Act (42 U.S.C. 2996 et seq.).

PART B—OTHER CHANGES IN THE IMMIGRATION LAW

SEC. 311. CHANGE IN COLONIAL QUOTA.

(a) INCREASE TO 5,000.—(1) Section 202(c) (8 U.S.C. 1152(c)) is amended by striking out "six hundred" and inserting in lieu thereof "5,000".

(2) Section 202(e) (8 U.S.C. 1152(e)) is amended by striking out "600" and inserting in lieu thereof "5,000".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply to fiscal years beginning after the date of the enactment of this Act.

SEC. 312. STUDENTS.

(a) REQUIRING TWO-YEAR FOREIGN RESIDENCE FOR MOST FOREIGN STUDENTS.—Section 212(e) (8 U.S.C. 1182(e)) is amended—

(1) by striking out "(e) No person" and inserting in lieu thereof "(e)(1) No person (A)",

(2) by inserting after "training," the following: "or (B) except as provided in paragraph (2), admitted under subparagraph (F) or (M) of section 101(a)(15) or acquiring such status after admission,",

(3) by striking out "clause (iii)" in the second proviso and inserting in lieu thereof "clause (A)(iii) or clause (B) of the first sentence",

(4) by striking out ": *Provided, That* upon" and inserting in lieu thereof ". Upon",

(5) by striking out ": And provided further, That except" and inserting in lieu thereof ". Except", and

(6) by designating the second and third sentences (as so amended) as paragraphs (2) and (3), respectively,

(7) by adding at the end the following new paragraphs:

"(4) The Attorney General may waive such two-year foreign residence requirement in the case of an alien described in clause (B) of paragraph (1) who is an immediate relative (as specified in section 201(b)).

"(5) The Attorney General, in the case of an alien described in clause (B) of paragraph (1) who has the status of a nonimmigrant under section 101(a)(15)(F), may waive such two-year foreign residence requirement if the Attorney General determines that the waiver is in the public interest and that the alien—

"(A) is applying for a visa as an immigrant described in paragraph (3) or (6) of section 203(a) and meets the requirements of paragraph (6), or

"(B) is applying for a visa as a nonimmigrant described in section 101(a)(15)(H)(iii) and meets the requirements of paragraph (7).

"(6) An alien meets the requirements of this paragraph if the alien—

"(A) is admitted to the United States under section 101(a)(15)(F) before October 1, 1992, and

"(B) has obtained—

"(i) has obtained an advanced degree from a college or university in the United States and has been offered a position on the faculty (including as a researcher) of a college or university in the United States in the field in which he obtained the degree,

"(ii) a degree in a natural science, mathematics, computer science, or an engineering field from a college or university in the United States and has been offered a research, business, or technical position by a employer in the field in which he obtained the degree, or

"(iii) an advanced degree in business or economics from a college or university in the United States, has exceptional ability in business or economics, and has been offered a research, business, or technical position by a United States employer which requires such exceptional ability,

and has received a certification under section 212(a)(14) with respect to the position.

"(7) An alien meets the requirements of this paragraph if the alien—

"(A) has obtained a degree in a natural science, mathematics, computer science, or an engineering or business field;

"(B) will receive no more than four years of training by a firm, corporation, or other legal entity in the United States, which training will enable the alien to return to the country of his nationality or last residence and be employed there as a manager by the same firm, corporation, or other legal entity, or a branch, subsidiary, or affiliate thereof; and

"(C) furnishes the Attorney General each year with an affidavit (in such form as the Attorney General shall prescribe) that attests that the alien (i) is in good standing in the training program in which the alien is participating, and (ii) will return to the country of his nationality or last residence upon completion of the training program.".

(b) PROHIBITING ADJUSTMENT OF STATUS OF MOST STUDENT ENTRANTS.—Section 245(c) (8 U.S.C. 1255(c)) is amended by striking out "or" before "(3)" and by inserting before the period at the end the following: ", or (4) an alien (other than an immediate relative specified in section 201(b) or an alien who has received a waiver of the two-year foreign residence requirement of section 212(e)(1)) who entered the United States classified as a nonimmigrant under subparagraph (F) or (M) of section 101(a)(15)".

(c) NOT COUNTING PERIOD OF PRESENCE FOR SUSPENSION OF DEPORTATION.—Section 244(b) (8 U.S.C. 1254(b)) is amended—

(1) by striking out "(b)" and inserting in lieu thereof "(b)(1)", and

(2) by adding at the end the following new paragraph:

"(2) In determining the period of continuous physical presence in the United States under subsection (a), there shall not be included any period in which the alien was in the United States as—

"(A) a nonimmigrant described in subparagraph (F) or (M) of section 101(a)(15), or

"(B) a nonimmigrant described in section 101(a)(15)(H)(iii), pursuant to a waiver under section 212(e)(5)(B).".

(d) EFFECTIVE DATES.—(1) The amendments made by subsection (a) apply to aliens admitted to the United States as a nonimmigrant described in subparagraph (F) or (M) of section 101(a)(15) of the Immigration and Nationality Act after the date of the enactment of this Act or who otherwise acquire such status after such date.

(2) The amendments made by subsection (b) apply to aliens without regard to the date the aliens enter the United States.

(3) The amendments made by subsection (c) apply to periods occurring on or after the date of the enactment of this Act and shall not have the effect of excluding (in the determination of a period of continuous physical presence in the United States) any period before the date of the enactment of this Act.

SEC. 313. G-IV SPECIAL IMMIGRANTS.

(a) SPECIAL IMMIGRANT STATUS FOR CERTAIN OFFICERS AND EMPLOYEES OF INTERNATIONAL ORGANIZATIONS AND THEIR IMMEDIATE FAMILY MEMBERS.—Section 101(a)(27) (8 U.S.C. 1101(a)(27)) is amended by striking out "or" at the end of subparagraph (G), by striking out the period at the end of subparagraph (H) and inserting in lieu thereof "; or", and by adding at the end of the following new subparagraph:

"(I)(i) an immigrant who is the unmarried son or daughter of an officer or employee, or of a former officer or employee, of an international organization described in paragraph (15)(G)(i), and who (I) while maintaining the status of a nonimmigrant under paragraph (15)(G)(iv) or paragraph (15)(N), has resided and been physically present in the United States for periods totaling at least one-half of the seven years before the date of application for a visa or for adjustment of status to a status under this subparagraph and for a period or periods aggregating at least seven years between the ages of five and 21 years, and (II) applies for admission under this subparagraph no later than his twenty-fifth birthday or six months after the date this subparagraph is enacted, whichever is later;

"(ii) an immigrant who is the surviving spouse of a deceased officer or employee of such an international organization, and who (I) while maintaining the status of a nonimmigrant under paragraph (15)(G)(iv) or paragraph (15)(N), has resided and been physically present in the United States for periods totaling at least one-half of the seven years before the date of application for a visa or for adjustment of status to a status under this subparagraph and for a period or periods aggregating at least 15 years before the date of the death of such officer or employee, and (II) applies for admission under this subparagraph no later

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than six months after the date of such death or six months after the date this subparagraph is enacted, whichever is later;

"(iii) an immigrant who is a retired officer or employee of such an international organization, and who (I) while maintaining the status of a nonimmigrant under paragraph (15)(G)(iv), has resided and been physically present in the United States for periods totaling at least one-half of the seven years before the date of application for a visa or for adjustment of status to a status under this subparagraph and for a period or periods aggregating at least 15 years before the date of the officer or employee's retirement from any such international organization, and (II) applies for admission under this subparagraph before January 1, 1993, and no later than six months after the date of such retirement or six months after the date this subparagraph is enacted, whichever is later; or

"(iv) an immigrant who is the spouse of a retired officer or employee accorded the status of special immigrant under clause (iii), accompanying or following to join such retired officer or employee as a member of his immediate family.".

(b) NONIMMIGRANT STATUS FOR CERTAIN PARENTS AND CHILDREN OF ALIENS GIVEN SPECIAL IMMIGRANT STATUS.—Section 101(a)(15) (8 U.S.C. 1101(a)(15)) is amended by striking out "or" at the end of subparagraph (L), by striking out the period at the end of subparagraph (M) and inserting in lieu thereof "; or", and by adding at the end the following new paragraph:

"(N)(i) the parent of an alien accorded the status of special immigrant under paragraph (27)(I)(i), but only if and while the alien is a child, or

"(ii) a child of such parent or of an alien accorded the status of a special immigrant under clause (ii), (iii), or (iv) of paragraph (27)(I).".

SEC. 314. VISA WAIVER PILOT PROGRAM FOR CERTAIN VISITORS.

(a) ESTABLISHING VISA WAIVER PILOT PROGRAM.—Chapter 2 of title II, as amended by section 301(c), is further amended by adding after section 216 the following new section:

"VISA WAIVER PILOT PROGRAM FOR CERTAIN VISITORS

"SEC. 217. (a) ESTABLISHMENT OF PILOT PROGRAM.—The Attorney General and the Secretary of State are authorized to establish a pilot program (hereafter in this section referred to as the 'pilot program') under which the requirement of paragraph (26)(B) of section 212(a) may be waived by the Attorney General and the Secretary of State, acting jointly and in accordance with this section, in the case of an alien who meets the following requirements:

"(1) SEEKING ENTRY AS TOURIST FOR 90 DAYS OR LESS.—The alien is applying for admission during the pilot program period (as defined in subsection (e)) as a nonimmigrant visitor (described in section 101(a)(15)(B)) for a period not exceeding 90 days.

"(2) NATIONAL OF PILOT PROGRAM COUNTRY.—The alien is a national of a country which—

"(A) extends (or agrees to extend) reciprocal privileges to citizens and nationals of the United States, and

"(B) is designated as a pilot program country under subsection (c).

"(3) EXECUTES ENTRY CONTROL AND WAIVER FORMS.—The alien before the time of such admission—

"(A) completes such immigration form as the Attorney General shall establish under subsection (b)(3), and

"(B) executes a waiver of review and appeal described in subsection (b)(4).

"(4) ROUND-TRIP TICKET.—The alien has a round-trip, nontransferable transportation ticket which—

"(A) is valid for a period of not less than one year,

"(B) is nonrefundable except in the country in which issued or in the country of the alien's nationality or residence,

"(C) is issued by a carrier which has entered into an agreement described in subsection (d), and

"(D) guarantees transport of the alien out of the United States at the end of the alien's visit.

"(5) NOT A SAFETY THREAT.—The alien has been determined not to represent a threat to the welfare, health, safety, or security of the United States.

"(6) NO PREVIOUS VIOLATION.—If the alien previously was admitted without a visa under this section, the alien must not have failed to comply with the conditions of any previous admission as such a nonimmigrant.

"(b) CONDITIONS BEFORE PILOT PROGRAM CAN BE PUT INTO OPERATION.—

"(1) PRIOR NOTICE TO CONGRESS.—The pilot program may not be put into operation until the end of the 30-day period beginning on the date that the Attorney General submits to the Congress a certification that the screening and monitoring system described in paragraph (2) is operational and effective and that the form described in paragraph (3) has been produced.

"(2) AUTOMATED DATA ARRIVAL AND DEPARTURE SYSTEM.—The Attorney General in cooperation with the Secretary of State shall develop and establish an automated data arrival and departure control system to screen and monitor the arrival into and departure from the United States of nonimmigrant visitors receiving a visa waiver under the pilot program.

"(3) VISA WAIVER INFORMATION FORM.—The Attorney General shall develop a form for use under the pilot program. Such form shall be consistent and compatible with the control system developed under paragraph (2). Such form shall provide for, among other items—

"(A) a summary description of the conditions for excluding nonimmigrant visitors from the United States under section 212(a) and under the pilot program,

"(B) a description of the conditions of entry with a waiver under the pilot program, including the limitation of such entry to 90 days and the consequences of failure to abide by such conditions, and

"(C) questions for the alien to answer concerning any previous denial of the alien's application for a visa.

"(4) WAIVER OF RIGHTS.—An alien may not be provided a waiver under the pilot program unless the alien has waived any right—

"(A) to review or appeal under this Act of an immigration officer's determination as to the admissibility of the alien at the port of entry into the United States, or

"(B) to contest, other than on the basis of an application for asylum, any action for deportation against the alien.

"(c) DESIGNATION OF PILOT PROGRAM COUNTRIES.—

"(1) UP TO 8 COUNTRIES.—The Attorney General and the Secretary of State acting jointly may designate up to eight countries as pilot program countries for purposes of the pilot program.

"(2) INITIAL QUALIFICATIONS.—For the initial period described in paragraph (4), a country may not be designated as a pilot program country unless the following requirements are met:

"(A) LOW NONIMMIGRANT VISA REFUSAL RATE FOR PREVIOUS 2-YEAR PERIOD.—The average number of refusals of nonimmigrant visitor visas for nationals of that country during the two previous full fiscal years was less than 2.0 percent of the total number of nonimmigrant visitor visas for nationals of that country which were granted or refused during those years.

"(B) LOW NONIMMIGRANT VISA REFUSAL RATE FOR EACH OF 2 PREVIOUS YEARS.—The average number of refusals of nonimmigrant visitor visas for nationals of that country during either of such two previous full fiscal years was less than 2.5 percent of the total number of nonimmigrant visitor visas for nationals of that country which were granted or refused during that year.

"(3) CONTINUING AND SUBSEQUENT QUALIFICATIONS.—For each fiscal year (within the pilot program period) after the initial period—

"(A) CONTINUING QUALIFICATION.—In the case of a country which was a pilot program country in the previous fiscal year, a country may not be designated as a pilot program country unless the sum of—

"(i) the total of the number of nationals of that country who were excluded from admission or withdrew their application for admission during such previous fiscal year as a nonimmigrant visitor, and

"(ii) the total number of nationals of that country who were admitted as nonimmigrant visitors during such previous fiscal year and who violated the terms of such admission,

was less than 2 percent of the total number of nationals of that country who applied for admission as nonimmigrant visitors during such previous fiscal year.

"(B) NEW COUNTRIES.—In the case of another country, the country may not be designated as a pilot program country unless the following requirements are met:

"(i) LOW NONIMMIGRANT VISA REFUSAL RATE IN PREVIOUS 2-YEAR PERIOD.—The average number of refusals of nonimmigrant visitor visas for nationals of that country during the two previous full fiscal years

was less than 2 percent of the total number of nonimmigrant visitor visas for nationals of that country which were granted or refused during those years.

"(ii) LOW NONIMMIGRANT VISA REFUSAL RATE IN EACH OF THE 2 PREVIOUS YEARS.—The average number of refusals of nonimmigrant visitor visas for nationals of that country during either of such two previous full fiscal years was less than 2.5 percent of the total number of nonimmigrant visitor visas for nationals of that country which were granted or refused during that year.

"(4) INITIAL PERIOD.—For purposes of paragraphs (2) and (3), the term 'initial period' means the period beginning at the end of the 30-day period described in subsection (b)(1) and ending on the last day of the first fiscal year which begins after such 30-day period.

"(d) CARRIER AGREEMENTS.—

"(1) IN GENERAL.—The agreement referred to in subsection (a)(4)(C) is an agreement between a carrier and the Attorney General under which the carrier agrees, in consideration of the waiver of the visa requirement with respect to a nonimmigrant visitor under the pilot program—

"(A) to indemnify the United States against any costs for the transportation of the alien from the United States if the visitor is refused admission to the United States or remains in the United States unlawfully after the 90-day period described in subsection (a)(1)(A), and

"(B) to submit daily to immigration officers any immigration forms received with respect to nonimmigrant visitors provided a waiver under the pilot program.

"(2) TERMINATION OF AGREEMENTS.—The Attorney General may terminate an agreement under paragraph (1) with five days' notice to the carrier for the carrier's failure to meet the terms of such agreement.

"(e) DEFINITION OF PILOT PROGRAM PERIOD.—For purposes of this section, the term 'pilot program period' means the period beginning at the end of the 30-day period referred to in subsection (b)(1) and ending on the last day of the third fiscal year which begins after such 30-day period.".

(b) LIMITATION ON STAY IN UNITED STATES.—Section 214(a) (8 U.S.C. 1184(a)) is amended by adding at the end the following new sentence: "No alien admitted to the United States without a visa pursuant to section 217 may be authorized to remain in the United States as a nonimmigrant visitor for a period exceeding 90 days from the date of admission.".

(c) PROHIBITION OF ADJUSTMENT TO IMMIGRANT STATUS.—Section 245(c) (8 U.S.C. 1255(c)), as amended by section 312(b), is further amended by striking out "or" before "(4)" and by inserting before the period at the end the following: "; or (5) an alien (other than an immediate relative as defined in section 201(b)) who was admitted as a nonimmigrant visitor without a visa under section 212(l) or section 217".

(d) PROHIBITION OF ADJUSTMENT OF NONIMMIGRANT STATUS.—Section 248 (8 U.S.C. 1258) is amended by striking out "and" at the end of paragraph (2), by striking out the period at the end of paragraph (3) and inserting in lieu thereof ", and" and by adding at the end thereof the following new paragraph:

"(4) an alien admitted as a nonimmigrant visitor without a visa under section 212(l) or section 217.".

(e) CONFORMING AMENDMENT TO TABLE OF CONTENTS.—The table of contents is amended by adding after the item relating to section 216 the following new item:

"Sec. 217. Visa waiver pilot program for certain visitors.".

SEC. 315. MISCELLANEOUS PROVISIONS.

(a) EQUAL TREATMENT OF FATHERS.—Section 101(b)(1)(D) (8 U.S.C. 1101(b)(1)(D)) is amended by inserting "or to its natural father if the father has or had a bona fide parent-child relationship with the person" after "natural mother".

(b) SUSPENSION OF DEPORTATION FOR CERTAIN ALIENS.—Section 244(b) (8 U.S.C. 1254(b)), as amended by section 312(c), is further amended by adding at the end the following new paragraph:

"(3) An alien shall not be considered to have failed to maintain continuous physical presence in the United States under paragraphs (1) and (2) of subsection (a) if the absence from the United States was brief, casual, and innocent and did not meaningfully interrupt the continuous physical presence.".

TITLE IV—REPORTS TO CONGRESS

SEC. 401. TRIENNIAL REPORTS CONCERNING IMMIGRATION.

(a) IN GENERAL.—The President shall transmit to the Committees on the Judiciary of the Senate and of the House of Representatives, not later than three years after the date of the enactment of this Act, and every three years thereafter, a comprehensive report on the general legal admissions under the Immigration and Nationality Act.

(b) CONTENTS.—Each report shall include—

(1) the number and classifications of aliens admitted (whether as as immediate relatives, special immigrants, refugees, or under the preference classifications, or as nonimmigrants), paroled, or granted asylum, during the relevant period;

(2) a reasonable estimate of the number of aliens who entered the United States during the period without visas or who became deportable during the period under section 241 of the Immigration and Nationality Act; and

(3) a description of the impact of admissions and other entries of immigrants, refugees, asylees, and parolees into the United States during the period on the economy, labor and housing markets, educational system, social services, foreign policy, environmental quality and resources, and population growth rate of the United States.

(c) DATA.—The information (referred to in subsection (b)) contained in each report shall be—

(1) described for the preceding three-year period, and

(2) projected for the succeeding five-year period, based on reasonable estimates substantiated by the best available evidence.

(d) RECOMMENDATIONS.—The President also shall include in such report any appropriate recommendations on changes in numerical limitations or other policies under title II of the Immigration and Nationality Act bearing on the admission and entry of aliens into the United States.

SEC. 402. REPORTS ON UNAUTHORIZED ALIEN EMPLOYMENT AND DISCRIMINATION IN EMPLOYMENT.

(a) PRESIDENTIAL REPORTS.—(1) The President shall transmit to the Committees on the Judiciary of the Senate and of the House of Representatives reports on the implementation of section 274A of the Immigration and Nationality Act (relating to unlawful employment of aliens) in accordance with this subsection.

(2) Every six months, beginning six months after the date of the enactment of this Act, the President shall transmit a report which shall include—

(A) an analysis of the adequacy of the employment verification system set forth in subsection (b) of section 274A of the Immigration and Nationality Act; and

(B) an analysis of the impact of that section on—

(i) the employment, wages, and working conditions of United States workers,

(ii) the number of aliens entering the United States illegally, and

(iii) the violation of terms and conditions of nonimmigrant visas by foreign visitors.

(3)(A) By each of the dates specified in subparagraph (B), the President shall transmit a report which shall include a description of the impact of section 274A of the Immigration and Nationality Act on—

(i) discrimination against citizen and permanent resident alien members of minority groups, and

(ii) the paperwork and recordkeeping burden on United States employers.

(B) The dates referred to in subparagraph (A) are 18, 36, and 54 months after the date of enactment of this Act.

(b) CIVIL RIGHTS COMMISSION MONITORING AND REPORTS.—(1) The Civil Rights Commission shall monitor the implementation and enforcement of the provisions of section 274A of the Immigration and Nationality Act and shall investigate allegations that the enforcement or implementation of that section has been conducted in a manner that results in unlawful discrimination by race or national origin against citizens of the United States or aliens who are not unauthorized aliens (as defined for purposes of that section).

(2) The Civil Rights Commission, not later than 18 months after the month in which this Act is enacted, shall prepare and transmit to the Committees on the Judiciary of the House of Representatives and of the Senate a report describing the implementation and enforcement of the provisions of that section during the preceding period, for the purpose of determining if a pattern of such unlawful discrimina-

tion has resulted. Two more such reports shall be prepared and transmitted 36 and 54 months after the month in which this Act is enacted.

SEC. 403. REPORTS ON H-2A PROGRAM.

(a) PRESIDENTIAL REPORTS.—The President shall transmit to the Committees on the Judiciary of the Senate and of the House of Representatives reports on the implementation of the temporary agricultural worker (H-2A) program, which shall include—

(1) the number of foreign workers permitted to be employed under the program in each year;

(2) the compliance of employers and foreign workers with the terms and conditions of the program;

(3) the impact of the program on the labor needs of the United States agricultural employers and on the wages and working conditions of United States agricultural workers; and

(4) recommendations for modifications of the program, including—

(A) improving the timeliness of decisions regarding admission of temporary foreign workers under the program,

(B) removing any economic disincentives to hiring United States citizens or permanent resident aliens for jobs for which temporary foreign workers have been requested,

(C) improving cooperation among government agencies, employers, employer associations, workers, unions, and other worker associations to end the dependence of any industry on a constant supply of temporary foreign workers, and

(D) the relative benefits to domestic workers and burdens upon employers of a policy which requires employers, as a condition for certification under the program, to continue to accept qualified United States workers for employment after the date the H-2A workers depart for work with the employer.

The recommendations under subparagraph (D) shall be made in furtherance of the Congressional policy that aliens not be admitted under the H-2A program unless there are not sufficient workers in the United States who are able, willing, and qualified to perform the labor or services needed and that the employment of the alien in such labor or services will not adversely affect the wages and working conditions of workers in the United States similarly employed.

(b) DEADLINES.—A report on the H-2A temporary worker program under subsection (a) shall be submitted not later than two years after the date of the enactment of this Act, and every two years thereafter.

SEC. 404. REPORTS ON LEGALIZATION PROGRAM.

(a) IN GENERAL.—The President shall transmit to Congress two reports on the legalization program established under section 245A of the Immigration and Nationality Act.

(b) INITIAL REPORT DESCRIBING LEGALIZED ALIENS.—The first report, which shall be transmitted not later than 12 months after the end of the application period for adjustment to lawful temporary residence status under the program, shall include a description of the population whose status is legalized under the program, including—

(1) geographical origins and manner of entry of these aliens into the United States,

(2) their demographic characteristics, and

(3) a general profile and characteristics.

(c) SECOND REPORT ON IMPACT OF LEGALIZATION PROGRAM.—The second report, which shall be transmitted not later than three years after the date of transmittal of the first report, shall include a description of—

(1) the impact of the program on State and local governments and on public health and medical needs of individuals in the different regions of the United States,

(2) the patterns of employment of the legalized population, and

(3) the participation of legalized aliens in social service programs.

SEC. 405. REPORT ON VISA WAIVER PILOT PROGRAM.

(a) MONITORING AND REPORT PILOT PROGRAM.—The Attorney General and the Secretary of State shall jointly monitor the pilot program established under section 217 of the Immigration and Nationality Act and shall report to the Congress not later than two years after the beginning of the program.

(b) DETAILS IN REPORT.—The report shall include—

(1) an evaluation of the program, including its impact—

(A) on the control of alien visitors to the United States,

(B) on consular operations in the countries designated under the program, as well as on consular operations in other countries in which additional consular personnel have been relocated as a result of the implementation of the program, and

(C) on the United States tourism industry; and

(2) recommendations—

(A) on extending the pilot program period, and

(B) on increasing the number of countries that may be designated under the program.

SEC. 406. REPORT ON INS RESOURCES.

Not later than 90 days after the date of the enactment of this Act, the Attorney General shall prepare and transmit to the Congress a report describing the type of equipment and personnel resources required to improve the capabilities of the Immigration and Naturalization Service so that it can adequately carry out services and enforcement activities, including those required to carry out the amendments made by this Act.

TITLE V—STATE AND LOCAL ASSISTANCE FOR INCARCERATION COSTS OF ILLEGAL ALIENS AND CERTAIN CUBAN NATIONALS

SEC. 501. REIMBURSEMENT OF STATES AND LOCALITIES FOR COSTS OF INCARCERATING ILLEGAL ALIENS AND CERTAIN CUBAN NATIONALS.

(a) REIMBURSEMENT TO STATES AND LOCALITIES.—The Attorney General shall reimburse States and local jurisdictions within a State for the costs incurred by the State or local jurisdiction—

(1) for the imprisonment of any illegal alien or Cuban national, described in subsection (b) or (c), respectively, who is convicted of a felony by the State or local jurisdiction, and

(2) for the pre-trial and post-trial detention of any illegal alien or Cuban national, described in subsection (b) or (c), respectively, who is convicted in the trial of a felony by the State or local jurisdiction.

(b) ILLEGAL ALIEN.—An illegal alien described in this subsection is any alien who is in the United States unlawfully and—

(1) whose most recent entry into the United States was without inspection, or

(2) whose most recent admission to the United States was as a nonimmigrant and—

(A) whose period of authorized stay as a nonimmigrant expired, or

(B) whose unlawful status was known to the Government,

before the date of the commission of the crime for which the alien is convicted.

(c) CUBAN NATIONAL.—A Cuban national described in this subsection is an alien who is a national of Cuba and who—

(1) was allowed by the Attorney General to come to the United States in 1980,

(2) after such arrival committed any violation of State or local law for which a term of imprisonment was imposed, and

(3) at the time of such arrival and at the time of such violation was not an alien lawfully admitted to the United States—

(A) for permanent or temporary residence, or

(B) under the terms of an immigrant visa or a nonimmigrant visa issued, under the laws of the United States.

(d) AUTHORIZATION OF APPROPRIATION.—There are authorized to be appropriated such sums as are necessary to carry out the purposes of this section.

(e) EFFECTIVE DATE.—This section shall become effective on October 1, 1986.

(f) STATE DEFINED.—The term "State" has the meaning given such term in section 101(a)(36) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(36)).

PURPOSE OF BILL

The purposes of the bill are to control illegal immigration to the U.S., make limited changes in the system for legal immigration, and provide a controlled legalization program for certain undocumented aliens who have entered this country prior to 1982.

The bill establishes penalties for employers who knowingly hire undocumented aliens, thereby ending the magnet that lures them

to this country. It also revises the procedures for the temporary entry of foreign agricultural workers under the H-2 program and provides permanent residence to certain aliens performing field work with respect to perishable crops.

COMMITTEE VOTE

The full Judiciary Committee considered the bill on June 10, 17, 18, and 25, 1986, and on June 25, the full Committee ordered H.R. 3810, as amended, favorably reported to the House by a record vote of 25-10.

NEED FOR LEGISLATION

CONTROL OF ILLEGAL IMMIGRATION

This legislation seeks to close the back door on illegal immigration so that the front door on legal immigration may remain open. The principal means of closing the back door, or curtailing future illegal immigration, is through employer sanctions. The bill would prohibit the employment of aliens who are unauthorized to work in the United States because they either entered the country illegally, or are in an immigration status which does not permit employment. U.S. employers who violate this prohibition would be subject to civil and criminal penalties.

Employment is the magnet that attracts aliens here illegally or, in the case of nonimmigrants, leads them to accept employment in violation of their status. Employers will be deterred by the penalties in this legislation from hiring unauthorized aliens and this, in turn, will deter aliens from entering illegally or violating their status in search of employment.

The logic of this approach has been recognized and backed by the past four administrations, and by the Select Commission on Immigration and Refugee Policy. Legislation establishing employer sanctions passed the House of Representatives by overwhelming majorities in 1972 and 1973, but received no Senate action.

Now, as in the past, the Committee remains convinced that legislation containing employer sanctions is the most humane, credible and effective way to respond to the large-scale influx of undocumented aliens. While there is no doubt that many who enter illegally do so for the best of motives—to seek a better life for themselves and their families—immigration must proceed in a legal, orderly and regulated fashion. As a sovereign nation, we must secure our borders.

In fact, the Committee is worried that failure to control our borders could lead to increasing resentment against the continued admission of lawful immigrants and refugees.

During his testimony before the Immigration Subcommittee on September 9, 1985, Attorney General Edwin Meese III commented on this matter as follows:

> Regaining control of our borders is an essential goal of any true immigration reform. We cannot fairly speak of ourselves as a sovereign nation if we cannot responsibly decide who may cross our borders . . . We can truly preserve the best of our heritage as a nation of immigrants

> only by a reasoned policy, executed by effective control of our borders, that makes equitable decisions concerning who should be admitted to permanent American residence and eventual American citizenship. (1985 Immigration Subcommittee Hearings on H.R. 3080, Serial No. 28, p 4)

Since most undocumented aliens enter this country to find jobs, the Committee believes it is essential to require employers to share the responsibility to address this serious problem.

The need for control is underscored by international demographics. Undocumented aliens tend to come from countries with high population growth and few employment opportunities. The United States is not in a position to redress this imbalance by absorbing these workers into our economy and our population. U.S. unemployment currently stands at 7%, and is much higher among the minority groups with whom undocumented workers compete for jobs most directly.

In this regard, the following testimony was presented to the Immigration Subcommittee on September 9, 1985 by Althea Simmons, Director, Washington Bureau, NAACP:

> The NAACP strongly supports employer sanctions. Our branches across the country, particularly in large cities, report that the undocumented worker impacts the employment of blacks. Many blacks are forced from employment rolls by the undocumented worker who is hired at a subminimum wage and is at the mercy of the employer. The worker is consciously aware that he/she has no protection because of illegal status and will accept "starvation" wages to be employed in the United States.

Other countries with similar illegal migration problems have enacted employer sanctions and some of these countries recently indicated to the General Accounting Office (GAO) that "employer sanctions laws helped to deter illegal alien employment" (GAO Report on Illegal Aliens: Information on Selected Countries' Employment Prohibition Laws, October 1985, p. 2).

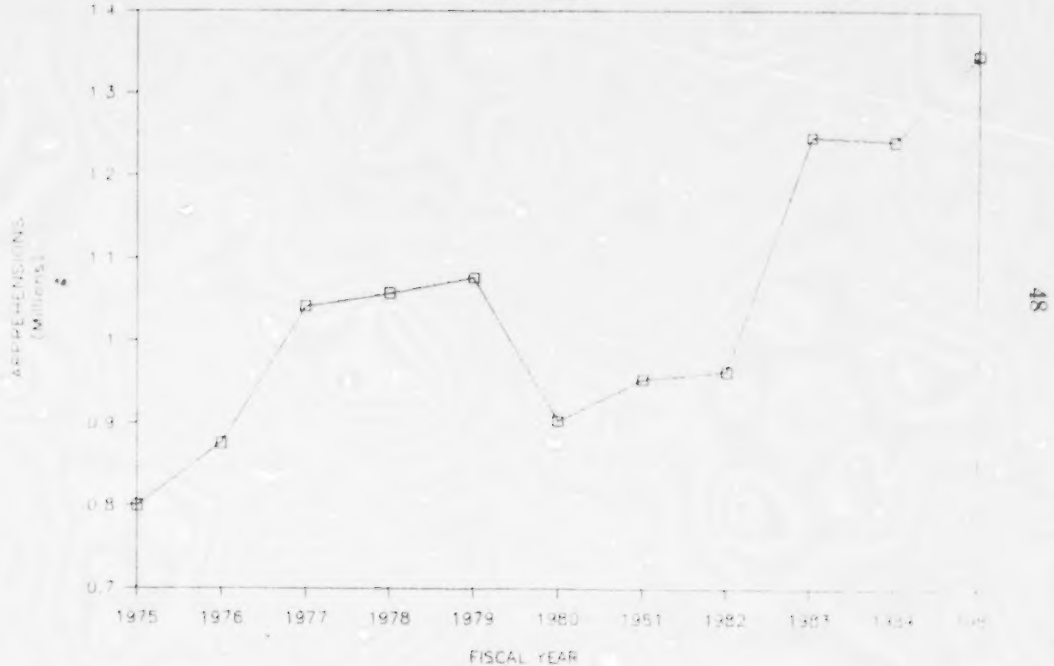
Unless employer sanctions are enacted, the Committee is concerned that the situation will continue to worsen.

In fact, INS has projected that the Border Patrol will apprehend 1.8 million undocumented aliens this year, primarily those seeking entry along the Southwest border. This represents a substantial increase over last year's apprehension level which was about 1.2 million. The apprehension level has exceed 1 million in 6 of the past 9 years.

The Chart below illustrates the apprehension levels over the past decade.

INS APPREHENSIONS

1975 - 1985



Source - Immigration and Naturalization Service

4/5

The Committee has consistently supported increased resources for the Border Patrol to stem the massive illegal entry of aliens and this bill specifically authorizes additional enforcement funds for this purpose.

Sanctions, coupled with improved border enforcement, is the only effective way to reduce illegal entry and in the Committee's judgment it is the most practical and cost-effective way to address this complex problem.

Because of the widespread fear that sanctions could result in employment discrimination against Hispanics and other minority groups, the legislation creates a Special Counsel in the Justice Department to handle discrimination charges that can be filed under the terms of the bill. The provision in the bill is patterned after the so-called "Frank amendment," which was passed on the House floor last Congress by a vote of 404–9. The current version also reflects changes that were endorsed by the Conferees during extensive discussions on this subject in the fall of 1984.

LEGALIZATION

The United States has a large undocumented alien population living and working within its borders. Many of these people have been here for a number of years and have become a part of their communities. Many have strong family ties here which include U.S. citizens and lawful residents. They have built social networks in this country. They have contributed to the United States in myriad ways, including providing their talents, labor and tax dollars. However, because of their undocumented status, these people live in fear, afraid to seek help when their rights are violated, when they are victimized by criminals, employers or landlords or when they become ill.

Continuing to ignore this situation is harmful to both the United States and the aliens themselves. However, the alternative of intensifying interior enforcement or attempting mass deportations would be both costly, ineffective, and inconsistent with our immigrant heritage.

The Committee believes that the solution lies in legalizing the statuts of aliens who have been present in the United States for several years, recognizing that past failures to enforces the immigration laws have allowed them to enter and to settle here.

This step would enable INS to target its enforcement efforts on new flows of undocumented aliens and, in conjunction with the proposed employer sanctions programs, help stem the flow of undocumented people to the United States. It would allow qualified aliens to contribute openly to society and it would help to prevent the exploitation of this vulnerable population in the work place.

The Committee strongly believes that a one-time legalization program is a necessary part of an effective enforcement program and that a generous program is an essential part of any immigration reform legislation.

REFORM OF LEGAL IMMIGATION

The legislation modifies the legal immigration provisions of the Immigration and Nationality Act (INA) in several respects.

First, it creates a new special immigrant category for dependents of international ogranizations who have resided in the United States for a long period of time. The Committee notes the unique situation in which such persons—children and widows of the principal G-4 representative of an international organization—find themselves once the principal dies or transfers to the home country.

The second area addressed in the bill restricts the ability of many foreign students to adjust status in the United States. In theory, the foreign student program exposes citizens of other countries to the institutions and culture of the United States, helps cement alliances with other countries, and provides for the transfer of knowledge and skills to other countries. The Committee is greatly concerned, however, that many foreign students simply do not return home. Studies of INS data suggest that approximately 10 percent of the foreign student population have their status adjusted to that of permanent residents of the United States and that an additional 10 percent fail to maintain their status and are apprehended by INS. Therefore, the Committee has placed restrictions on the ability of these students to remain in the United States and seek lawful permanent resident alien status.

Third, the bill changes the allocation of visas in two ways: increases the colonial ceiling from 600 to 5,000; and mandates a Presidential report by 1987 on the impact of all admissions of aliens to the U.S. on our country.

The last area which the Committee has addressed is that of providing a nonimmigrant visa waiver program for countries whose nationals have traditionally abided by U.S. immigration law. The Committee believes that a pilot visa waiver program will promote better relations with some of our closest allies and other friendly nations. It would eliminate an unnecessary barrier to travel and stimulate the tourism industry in the United States. Also, it would alleviate vast amounts of paperwork allowing U.S. consular offices to better meet high priority responsibilities such as visa screening in high fraud areas. Because the Committee remains concerned with the potential for abuse, the program is linked to the establishment of an arrival-departure system for the continued screening of immigrants as well as nonimmigrants.

FOREIGN AGRICULTURAL WORKERS

The bill creates a program designed to meet the special labor needs of Western growers of perishable commodities, and at the same time modifies the existing H-2 program to make it concomitantly more protective of American labor and more responsive to the legitimate needs of growers who are unable to secure such labor.

The H-2 program, in one form or another, has been an element of U.S. immigration policy since the 1940's. The essential objective of the program, which the bill does not change, is to permit employers to utilize temporary foreign worker if domestic workers cannot be found and if it can be shown that the use of such foreign labor would not adversely affect the wages and working conditions of domestic workers similarly employed. Overall, the program has

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worked reasonably well with respect to non-agricultural occupations. However, with respect to agriculture, the Committee has identified a number of areas where improvement is needed. Accordingly, the bill creates a separate H-2 program for agricultural occupations and sets forth the basic contours that program is expected to take. The bill makes no changes regarding the non-agricultural H-2 law.

Briefly, the bill modifies existing agricultural H-2 procedures by (1) providing for input by the Secretary of Agriculture; (2) establishing time periods within which the Secretary of Labor is expected to act; (3) setting forth requirements regarding housing and other labor conditions; (4) defining the legal responsibilities of agricultural associations and their members; (5) providing for expedited appeals and reconsiderations; and (6) establishing rules for the recruitment of domestic workers.

Regarding perishable commodities, the Committee recognizes that special situations exist that may render the H-2 program less than fully responsive to Western grower needs. Accordingly, the Committee bill establishes a mechanism by which "special agricultural workers" may be admitted to perform field work in perishable crops. Because the Committee is fully cognizant, however, of the problems that occurred under the *Bracero* program of the 1940's and 1950's, the Committee believes that two essential elements must be included in any new program created. First, the workers must be free to move from employer to employer without risk of negative repercussions. And second, the workers must be fully protected under all federal, state and local labor laws.

Accordingly, the bill creates a program that allows workers to be admitted or adjusted as permanent resident aliens if they can show that they performed 60 man-days of labor in perishable commodities during the period May 1, 1985 through May 1, 1986. Since these individuals would not be required to actually perform farm labor in the United States after admission or adjustment, and since the initial group admitted or adjusted may not be sufficient to meet the unique needs of Western growers, the bill provides for the admission or adjustment of additional workers, again as permanent resident aliens, in future years if the Administration finds that the labor requirements of Western growers are still not met. The formula for admitting these additional workers is fully discussed later in this report.

History of Legislation

1970's

Legislation pertaining to the control of illegal or undocumented immigration received serious attention by the Congress in the early 1950s and for the past 10 years, since 1971. Chief among the legislative approaches to the problems has been the proposed establishment of penalties for the employment of undocumented aliens, known to be in the country in violation of the immigration law.

Attempts to pass legislation prohibiting the employment and establishing penalties for the harboring of undocumented aliens back in 1951 and 1952 were only partially successful. The result was the Act of March 20, 1952, subsequently recodified as sections 274 and

287(a)(3) of the Immigration and Nationality Act of 1952. Under the law then and now, the willful importation, transportation, or harboring of undocumented aliens is a felony, punishable by a $2,000 fine or imprisonment of up to 5 years, or both. However, employment is specifically exempted from the penalties for harboring in what was popularly referred to as the "Texas proviso."

Extensive imvestigative and legislative hearings on the problem of undocumented aliens were held during the 92d Congress beginning in 1971, by the House Judiciary Subcommittee with special jurisdiction over immigration matters, then under the chairmanship of Representative Peter W. Rodino, Jr. Quoting from a 1975 House Judiciary Committee report, "The basic conclusion reached by the majority of the members of the subcommittee as a result of the hearings was that the adverse impact of illegal aliens was substantial, and warranted legislation both to protect U.S. labor and the economy, and to assure the orderly entry of immigrants into this country." (H. Rept. 94-506, p. 3).

These hearings formed the basis for a series of bills prohibiting the knowing employment of undocumented aliens, and establishing a graduated three-step series of administrative, civil, and criminal penalties for employers violating this prohibition. The basic rationale for this approach was explained as follows during the 94th Congress by the House Judiciary Committee:

> The committee believes that the primary reason for the illegal alien problem is the economic imbalance between the United States and the countries from which aliens come, coupled with the chance of employment in the United States. Consequently, it is apparent that this problem cannot be solved as long as jobs can be obtained by those who enter this country illegally and by those who enter legally as nonimmigrants for the sole purpose of obtaining employment.
>
> The committee, therefore, is of the opinion that the most reasonable approach to this problem is to make unlawful the "knowing" employment of illegal aliens, thereby removing the economic incentive which draws such aliens to the United States as well as the incentive for employers to exploit this source of labor (H. Rept. 54-506, p. 6).

Legislation embodying this approach passed the House of Representatives during the 92d and 93d Congresses, and received the continuous support of the Nixon and Ford administrations during this period. H.R. 16188 passed the House during the 92d Congress on September 12, 1972 by voice vote after a motion to recommit it to the Judiciary Committee was defeated by a vote of 297 yeas to 53 nays. During the 93d Congress, H.R. 982 passed the House on May 3, 1973 by vote of 297 yeas to 63 nays. However, neither bill received Senate action.

A bill identical to the House-passed H.R. 982 of the 93d Congress was intoduced at the beginning of the 94th Congress, and hearings were held by the House Judiciary Subcommittee on Immigration, Citizenship, and International Law. A clean bill, H.R. 8713, was reported to the House on September 24, 1975, but received no further action by the House.

The issue of illegal immigration continued to be of concern of the Executive Branch. On January 6, 1975, President Gerald Ford established a Cabinet-level Domestic Council Committee on Illegal Aliens, chaired by Attorney General Edward Levi. In its report dated December 1976, the Domestic Council Committee concluded that the major impact of undocumented aliens seemed to be in the labor market, and recommended enactment of legislation establishing penalties for knowing employment of undocumented aliens as well as enactment of a provision allowing for the regularization of status of certain undocumented aliens.

The problem received extensive study by the Carter administration, principally under the direction of Attorney General Griffin Bell, INS Commissioner Leonel Castillo, and Secretary of Labor Ray Marshall. On August 4, 1977, President Carter submitted a message to the Congress outlining "a set of actions to help markedly reduce the increasing flow of undocumented aliens in this country and to regulate the presence of the millions of undocumented aliens already here" (H. Doc. 95-202). President Carter proposed civil penalties for the employment of undocumented aliens increased Southwest border enforcement, continued cooperation with major source countries and a legalization program.

The administration bill, entitled the "Alien Adjustment and Employment Act of 1977," was introduced in the House in the 95th Congress as H.R. 9531 by Judiciary Committee Chairman Peter W. Rodino on October 12, 1977; and in the Senate as S. 2252 by Judiciary Committee Chairman James O. Eastland on October 28, 1977.

The Carter Administration bill did not receive action during the 95th Congress beyond the Senate Judiciary Committee hearings on S. 2252 in May 1978.

Another enactment in the 95th Congress of relevance to the undocumented alien issue was P.L. 95-412, the Act of October 5, 1978, which created a 16-member Select Commission on Immigration and Refugee Policy to conduct a study of immigration and refugee laws, policies and procedures and report to the President and the Congress on its findings and recommendations for legislative and administrative change.

The 16-member Select Commission on Immigration and Refugee Policy consisted of 4 members of the House Judiciary Committee (Representatives Rodino, McClory, Holtzman, Fish); 4 members of the Senate Judiciary Committee (Senators Kennedy, Mathias, DeConcini, Simpson); 4 Carter Administration Cabinet members (State, Justice, Health and Human Services (HHS), Labor); and 4 public members appointed by President Carter, including its Chairman the Reverend Theodore Hesburgh, President of Notre Dame University.

The Select Commission's basic conclusion that immigration has been and continues to be in the national interest underlies many of the report's recommendations which included enactment of legislation making it illegal to hire, undocumented aliens, increased border and interior enforcement, and legalization of the status of certain aliens illegally present in the United States.

1980's

97TH CONGRESS

Joint hearings were held on the report and recommendations of the Select Commission on Immigration and Refugee Policy on May 5, 6, and 7, 1981, by the Senate Judiciary Subcommittee on Immigration, and Refugee Policy and the House Judiciary Subcommittee on Immigration, Refugees, and International Law, under the chairmanship of Senator Simpson (R., Wyo.) and Representative Romano L. Mazzoli (D., Ky.). These were the first joint congressional hearings on immigration since those held in 1951 on the legislation subsequently enacted as the Immigration and Nationality Act of 1952.

H.R. 6514 was introduced by Representative Romano Mazzoli, Chairman of the House Judiciary Subcommittee on Immigration, Refugees and International Law, for himself and Representative Hamilton Fish, Jr., on May 27, 1982 after subcommittee markup of H.R. 5872 on May 18 and 19, 1982. The bill was unanimously approved by the subcommittee May 19. The full Judiciary Committee considered H.R. 6514 on September 14, 15, 16, 21, and 22 and on the last day favorably reported the bill to the House with a single amendment in the nature of a substitute. (H. Rept. 97-890, Pt. 1.)

The introduction of H.R. 5872 was preceded by the 1981 report of the Select Commission on Immigration and Refugee Policy (U.S. Immigration Policy and the National Interest, Joint Committee hearings, Print No. 8) and by the announcement of the Reagan Administration's proposals for immigration and refugee policy reform at a joint hearing of the House and Senate Judiciary immigration subcommittees on July 30, 1981. The Administration's proposals were introduced on behalf of the Reagan Administration as H.R. 4832/S. 1765 on October 22, 1981 by the Chairmen of the House and Senate Judiciary Committees.

Extensive and comprehensive hearings were conducted by the House Judiciary Immigration Subcommittee on various aspects of immigration law and policy as well as on specific aspects of the Administration bill during October and November 1981 (Final Report of the Select Commission on Immigration and Refugee Policy, Serial No. J-97-38 Immigration Reform, Pts. 1 & 2, Ser. No. 30). The hearings culminated in the introduction of identical companion bills (H.R. 5872/S. 2222) entitled the "Immigration Reform and Control Act of 1982" on March 17, 1982, by the Chairmen of the House and Senate Judiciary Immigration Subcommittees, Congressman Romano Mazzoli and Senator Alan Simpson. The purposes of the bills as described by Congressman Mazzoli were "to reform outmoded and unworkable provisions of the present immigration law and gain control of our national borders." On April 1 and 20, 1982, the House and Senate Judiciary Immigration Subcommittee conducted joint hearings on the bills (Immigration Reform, Serial No. 40).

Prior to Floor action, on H.R. 5614, the Speaker referred the bill to the following Committees: Agriculture, Education and Labor, Energy and Commerce, and Ways and Means. A report was issued by the Committee on Education and Labor (H. Rept. 97-890, Pt. II) and the other Committees were discharged.

On December 16, 17, 18, 1982, the House considered H.R. 7357, which was introduced with a technical amendment, coming to no resolution thereon. S. 2222 passed the Senate August 17, 1982 and was referred to the Judiciary Committee.

98TH CONGRESS

On February 17, 1983, Representative Romano L. Mazzoli introduced H.R. 1510, the Immigration Reform and Control Act of 1983. This was essentially the same bill passed by the House Judiciary Committee in the 97th Congress.

The Subcommittee on Immigration, Refugees, and International Law held six days of hearings on the bill in March, covering 26 hours and 74 witnesses. (Hearings before the Subcommittee on Immigration, Refugees, and International Law of the Committee on the Judiciary, on H.R. 1510, Serial No. 2, March 1983—hereinafter cited as 1983 Immigration Subcommittee hearings.)

The Immigration Subcommittee marked up the legislation on April 5 and 6, 1983, and on the later date reported it to the full Committee. The full Committee marked the bill up on May 3, 4, and 5, 1983, and on the last date ordered the bill (H.R. 1510) favorably reported to the House in the form of a single amendment in the nature of a substitute by a record vote of 20-9. The Report (H. Rept. 98-115, Part I) was filed on May 13, 1983.

The bill was then sequentially referred to the following Committees: Agriculture, Education and Labor, Energy and Commerce, and Ways and Means. The Committee on Energy and Commerce was discharged from further consideration of the bill on June 27, 1983, and on the same date the Agriculture Committee filed its report on the bill (H. Rept. 98-115, Part II). Under the terms of a one-day extension of the referral, the Committees on Energy and Commerce and Education and Labor filed their reports on June 28, 1983. (H. Report 99-115, Part III and H. Rept. 99-115, Part IV.)

On June 8, 1984, the Committee on Rules granted a modified open rule providing for 5½ hours of general debate and the consideration of 69 amendments.

The House considered the bill on June 11, 12, 13, 14, 15, 19, and 20, 1984 and on the last day, it was approved by a record vote of 216-211.

The conferees met for 10 days in September and October (Sept. 13, 14, 17, 19, 20, 21, 24, 25, 26, and October 9, 1984) in an effort to resolve the differences between H.R. 1510 and S. 529 but were unable to reach final agreement.

99TH CONGRESS

On July 25, 1985, the Chairman of the Committee, Peter W. Rodino, Jr. and the Chairman of the Subcommittee on Immigration, Refugees, and International Law, Romano L. Mazzoli, jointly introduced H.R. 3080, the "Immigration Control and Legalization Amendments Act of 1985."

This was essentially a combination of the bill passed by the Judiciary Committee and the House during the 98th Congress and some of the provisions approved during the 10 days of conference deliberations on the Immigration Reform bill during that Congress.

The Subcommittee on Immigration, Refugees, and International Law held 4 days of hearings on the bill in September and October 1985 and received testimony from an additional 50 witnesses. These hearings were scheduled to receive testimony on many of the matters that were the subject of considerable controversy during the conference deliberations. (Hearings before the Subcommittee on Immigration, Refugees, and International Law on H.R. 3080, Serial No. 28, Serial No. 35—hereinafter cited as 1985 Immigration Subcommittee Hearings.)

Specifically, the hearings covered the issues of temporary agricultural workers, federal funding for legislation impacts and the anti-discrimination provision that was extensively discussed during the conference deliberations in the 98th Congress.

The Subcommittee considered the bill on November 18 and 19, 1985 and on the latter date ordered a clean bill favorably reported to the full Committee. That clean bill (H.R. 3810) was introduced by Chairmen Rodino and Mazzoli on November 21, 1985.

Analysis or Major Provisions of Legislation, as Amended

CONTROL OF ILLEGAL IMMIGRATION

Employer sanctions

As noted earlier in this report, the Committee is convinced that as long as job opportunities are available to undocumented aliens, the intense pressure to surreptitiously enter this country or to violate status once admitted as a nonimmigrant in order to obtain employment will continue. In an effort to eliminate the availability of employment, the legislation imposes penalties on those employers who hire, recruit or refer undocumented aliens.

The penalties are uniformly applied to all employers regardless of the number of employees, as well as to those persons who recruit or for a fee refer undocumented aliens for employment.

With regard to referral, the legislation is not intended to apply to labor unions or other organizations which do not actually refer individuals for employment for a fee or profit motive.

These penalties are prospective and shall apply only to acts of employment, referral or recruitment that take place after the enactment of this legislation. The Committee felt such as approach would be the least disruptive to the American businessman and would also minimize the possibility of employment discrimination.

The bill requires a one year period of public education. During the first six months, the penalties and injunctive remedy would not apply. The prohibition on such employment, recruitment or referral would, nevertheless, still be in effect during the six month period in an effort to promote voluntary compliance.

The legislation also provides an affirmative defense for employers, referrers or recruiters who show "good faith" compliance with the recordkeeping requirements described later in this section of the report. In order to assist employers in meeting their responsibilities under this legislation, the Attorney General is required to develop and disseminate forms to employers, referrers and recruiters. These forms will then be executed by employers, referrers and

recruiters, as well as the person employed or referred and retained for inspection by INS and the Department of Labor.

By meeting these requirements in "good faith" an employer, referrer or recruiter can establish an affirmative defense that he or she has not hired, recruited or referred an undocumented alien in violation of this legislation. The Committee intends that the act of establishing "good faith" compliance could be shown by proof of the employer's, referrer's or recruiter's review of the documents specified in the legislation and retention of the vertification forms, inclusive of the employee's attestation. It can also be shown in the case of referrals from State employment agencies by the employer's retention of appropriation documentation (including status verification) issued by the referral agency.

In other words, if the person or entity performs these activities, a rebuttable presumption is established that he or she has acted in "good faith," and the burden is shifted to the government to prove otherwise. It should be noted that this is not as absolute defense, and the government could rebut the presumption by offering proof that the documents did not reasonably appear on their face to be genuine, that the verification process was pretextual, or that the employer, recruiter or referrer colluded with the employee in falsifying documents, etc.

Of course, even if the employer does not seek to establish an affirmative defense, the burden of proving a violation of the hiring, recruitment or referrral prohibition always remains on the government—by a preponderance of the evidence in the case of civil penalties and beyond a reasonable doubt in the case of criminal penalties.

The Committee does not intend to impose a continuing verification obligation on employers. However, if an employer has knowledge that an alien's employment becomes unauthorized due to a change in nonimmigrant status, or that the alien has fallen out of a status for which work permission is authorized, sanctions would apply.

It is not the intent of this Committee that sanctions would apply in the case of casual hires (i.e., those that do not involve the existence of an employer/employee relationship). Similary, sanctions are not intended to apply to those few employers who make a "good faith" effort to comply with the legislation, but who, because of unique and special circumstances, confront processing delays on the part of INS or the Department of Labor. For example, it has been brought to the Committee's attention that the National Hockey League has encountered some difficulties in securing timely labor certifications and temporary worker (H) petition approvals.

The Committee recognizes the special problems facing professional sports and does not intend that sanctions would be applicable in the case of technical violations caused by exigent circumstances or processing delays. The Committee expects INS to develop appropriate administrative procedures to insure that the employment of alien professional athletes is temporarily authorized, pending the final adjudication of labor certification applications and temporary worker (H) petitions.

The penalties contained in this legislation are intended to specifically preempt any state or local laws providing civil fines and/or criminal sanctions on the hiring, recruitment or referral of undocumented aliens.

They are not intended to preempt or prevent lawful state or local processes concerning the suspension, revocation or refusal to reissue a license to any person who has been found to have violated the sanctions provisions in this legislation. Further, the Committee does not intend to preempt licensing or "fitness to do business laws," such as state farm labor contractor laws or forestry laws, which specifically require such licensee or contractor to refrain from hiring, recruiting or referring undocumented aliens.

It is not the intention of the Committee that the employer sanctions provisions of the bill be used to undermine or diminish in any way labor protections in existing law, or to limit the powers of federal or state labor relations boards, labor standards agencies, or labor arbitrators to remedy unfair practices committed against undocumented employees for exericising their rights before such agencies or for engaging in activities protected by existing law. In particular, the employer sanctions provisions are not intened to limit in any way the scope of the term "employee" in Section 2(3) of the National Labor Relations Act (NLRA), as amended, or of the rights and protections stated in Sections 7 and 8 of that Act. As the Supreme Court observed in *Sure-Tan Inc.* v. *NLRB*, 467 U.S. 883 (1984) application of the NLRA "helps to assure that the wages and employment conditions of lawful residents are not adversely affected by the competition of illegal alien employees who are not subject to the standard terms of employment." 467 U.S. at 893.

1. Citation.—Following the 6-month education period, the Attorney General is authorized to issue, during the subsequent 12-month period, a citation or warning to any person or entity which is found to have employed, recruited or for a fee referred an undocumented alien.

This citation would issue if, upon evidenced or information which the Attorney General deems persuasive, he concludes that such person or entity has engaged in such conduct. The Committee expects the Attorney General to issue guidelines, including specific examples, as to what he would consider persuasive evidence or information.

No judicial review of a citation is anticipated, since it has no immediate legal or detrimental effect. Instead, it is intended to serve as a personal notification to an offfending employer as to the existence of a Federal prohibition on the employment of undocumented aliens, as well as a warning as to the penalties that will be applied in the event of further violations.

2. Civil penalties.—A knowing violation subsequent to issuance of a citation will subject the offending party to a civil fine of between $1,000 and $2,000 for each undocumented alien. The Committee wishes to make it clear that the employer is subject to civil penalties once a citation has been issued to such employer. In other words, even during the 12-month citation period, a civil fine will lie once the citation has been issued.

As in the case of a citation, the offending party may request a hearing on any civil penalty assessed against him or her by the At-

torney General. Such hearing shall be conducted before an Administrative Law Judge in accordance with the adjudication requirements set forth in the Administrative Procedures Act (5 U.S.C. § 554).

Judicial review of the decision is also available. An appeal to the U.S. Circuit Courts can be taken within 60 days of a final order. Alternatively, failure to pay a civil penalty will subject the offending party to a collection suit by the Attorney General in the appropriate U.S. District Court. In other words, if the assessment has been contested, judicial review may be pursued before the circuit courts; if the assessment has not been contested, the Attorney General will commence a collection suit in the appropriate district court.

In the event of a subsequent violation, the offending party is subject to a second civil fine of between $2,000 and $5,000. It is the Committee's intent that the second fine will not apply until the first fine is administratively final.

3. Criminal penalties.—In the case of an employer who engages in a "pattern or practice" of violations, that employer shall be subject to criminal penalties of not more tha $1,000 and/or imprisonment for not more than 6 months for each alien in respect to whom a violation occurs.

The term "pattern or practice" has received substantial judicial construction, since the term appears in the Voting Right Act (42 U.S.C. 1971 et seq.), the Civil Rights Act of 1964 (42 U.S.C. 2000 et seq.), and the Fair Housing Act of 1968 (42 U.S.C. 3601 et seq.). The Committee emphasizes that it intends to follow the judicial construction of that term as set forth in *U.S.* v. *Mayton*, 335 F. 2d 153 (1964), *International Brotherhood of Teamsters* v. *U.S.*, 431 U.S. 324, and *U.S.* v. *International Association of Ironworkers Local No. 1*, 438 F. 2d 679 (1971). These cases all indicate that the term "pattern or practice" has its generic meaning and shall apply to regular, repeated and intentional activities, but does not include isolated, sporadic or accidental acts. The same interpretation of "pattern or practice" shall apply when that term is used in this bill with regard to the injunctive remedy that may be sought by the Attorney General for recruitment, referral or employment violations, as well as for certain unfair immigration-related employment practices.

It should be emphasized that this penalty provisions described above—unlike the recordkeeping requirements discussed below—impose no direct obligations or affirmative requirements upon an employer. Instead, this section prohibits the employment, recruitment or referral of undocumented aliens, and it is the Committee's belief that by and large most employers will desist from hiring undocumented aliens when it is known that civil and criminal penalties will attach to such activity.

4. Injunctive remedy.—In addition to imposing civil and criminal penalties, the bill also grants U.S. district courts jurisdiction to enjoin employers from engaging in "pattern or practice" violations and authorizes the Attorney General to bring such actions.

This provision is designed to strengthen the legislation and improve the government's ability to deal with repeat offenders. Experience has demonstrated that many employers continue to hire

aliens even after INS has visited their business and located undocumented aliens, notwithstanding attempts by INS to discourage this practice.

The Committee is of the opinion that this injunctive remedy as a supplement to the penalties in the legislation will prove to be a quick and effective enforcement tool. It is intended that this remedy be available at any time. The injunctive remedy is not available, however, during the first six months following the bill's enactment—as is the case for the penalties described above.

5. Counting of violations.— The legislation also provides that in counting the number of previous determinations of violations for purposes of determining which penalty applies, determinations of more than one violation in the course of a single proceeding or adjudication are counted as a single determination. Moreover, in the case of a corporation or other entity composed of distinct, physically separate subdivisions which do their own hiring and recruiting for employment (without reference to the practices of, or under the control of, or common control with another subdivision) such subdivision shall be considered a separate person or entity. Under this provision a parent corporation, such as a large automaker, which has several subdivisions that hire independently of each other would be held jointly responsible whenever one of its subdivisions violates the provisions of this Section.

For example, suppose automaker A has two distinct subdivisions, X and Y. In 1984, subdivision X commits its second violation, i.e., it becomes liable under the first civil fine provision. At that point, automaker A is jointly responsible with X for such liability. In 1985, subdivision Y commits its first violation (which, by definition, results in a citation only). At that point, automaker A is, like Y, responsible for that violation. However, insofar as A is concerned, the violation by Y is A's first violation. That is to say, the violation by Y is not added to the previous two violations by X to create third stage liability (i.e. a second level civil fine) for automaker A. In short, the parent corporation can never be subject to a level of offense that is higher than the highest level reached by any of its independent subdivisions.

It must be emphasized that this limitation applies only to those situations where the subdivisions of the corporation or entity do their own hiring and recruiting for employment completely independent and irrespective of the other subdivisions.

6. Paperwork requirements.—In order to protect both persons subject to penalties and members of minority groups legally in this country, the bill provides a system to verify that prospective employees are eligible to work in the United States.

In the Committee's judgment, an effective verification procedure, combined with an affirmative defense for those who in good faith follow the procedure, is essential. Otherwise, the system cannot both be effective and avoid discrimination.

The verification system involves examination of existing documents adequate to verify both that the applicant is presenting his true identity and that he is authorized to work. The user of the system will then sign a statement that the required documents have been examined, and obtain the signature of the prospective

employee that he is a U.S. citizen, permanent resident alien, or alien authorized to perform the particular work.

An employer will be deemed to have complied with the paperwork requirements, if an individual has been referred for employment by a state employment agency, if such an employer retains appropriate documentation of the referral by that agency which specifically certifies that such agency has satisfied the paperwork requirements. However, this legislation is not intended to impose any specific verification or paperwork requirements upon state employment agencies.

These forms must be retained and made available for inspection by INS or the Labor Department during such period as the Attorney General shall specify in regulations.

Failure to comply with these requirements shall subject the offending party to a civil fine of between $250 and $1000 for each alien.

It is the Committee's expectation that employers will make every effort to apply the verification process to job applicants who are being seriously considered for employment so that the possiblity of employment discrimination based on national origin will be minimized.

The bill specifically prohibits the use of attestation forms for purposes unrelated to the enforcement of this legislation or 18 USC 1546—relating to the fraud and misuse of various immigration documents. Concern has been expressed that verification information could create a "paper trail" resulting in the utilization of this information for the purpose of apprehending undocumented aliens. The bill is designed to insure that this information will not be used by the INS in its alien enforcement activities. It is not intended, however, to prevent information from being used where there is a charge of employment discrimination.

The Committee directs that INS fully cooperate with employers who desire to understand their verification obligations. It is not expected that employers ascertain the legitimacy of documents presented during the verification process. However, should employers seek to check on the authenticity of any alien identification document, INS officials are expected to assist them in a timely manner.

In this regard, the Department of Justice this year submitted the following prepared response to a Subcommittee inquiry on this matter:

> INS will establish a program for employers who report documents of a suspect nature. We will direct such employers not to make critical judgments of the authenticity of documents, but hire such individuals and request that INS makes an audit of the documents. INS will also continue to verify the status of lawful resident aliens who request such verification prior to seeking employment. More importantly INS will handle, on an immediate basis, the request for verification of documentation from any U.S. citizen or permanent resident alien or other alien authorized to work in the U.S., whose documentation has been mistakenly rejected by an employer. (1983 Immigration Subcommittee Hearings, p. 1458.)

The bill also includes language to protect both employers and prospective employees in the event cautious employers are unduly concerned by documentation presented to them. Specifically, the bill states that an employer will be deemed to have complied with the document examination requirement "if the document reasonably appears on its face to be genuine." In this event, the bill further provides that nothing in the legislation shall be construed as requiring the employer "to solicit the production of any other document or as requiring the individual (prospective employee) to produce such a document." In other words, if the verification procedure is followed, the language is intended to make clear that there is no requirement that an employer request additional documentation or that an employee produce additional documentation. The "reasonable man" standard is to be used in implementing this provision and the Committee wishes to emphasize that documents that reasonably appear to be genuine should be accepted by employers without requiring further investigation of those documents. In the event fraudulent documents are utilized, the bill does provide serious criminal penalties for such activities.

7. Subcontractor provision.—Some sanctions laws of foreign countries have proved to be ineffective because of loopholes which enable the use of subcontractors to avoid liability. The Committee intends to prevent any such loophole in the instant legislation. To accomplish this objective, the bill specifically provides that an employer "who uses a contract, subcontract, or exchange, entered into, renegotiated, or extended after the date of enactment . . . to obtain the labor of an alien in the United States knowing that the alien is an unauthorized (undocumented) alien" shall be considered to have hired the alien for employment.

8. Social security validation system.—While the bill allows for the use of existing identifiers as described under the "paperwork requirement" section above, it also requires the Attorney General to establish a "method to validate the social security account numbers" of persons applying for employment.

Specifically, the Attorney General is required to publish regulations on the establishment of such a system not later than 18 months after the enactment of this legislation. Further, not later than 6 months after final regulations are published, the Attorney General is required to implement this system.

Because of privacy concerns expressed by many Committee Members and many witnesses before the Committee, the bill specifically provides that nothing in the legislation "shall be construed to authorize, directly or indirectly, the issuance or use of national identifier cards or the establishment of a national identification card." This is intended to clearly express the Committee view that the verification procedures and the social security validation system are not intended to lead to the establishment or use of a national identification card.

Compliance with the social security validation system provides an employer with the same affirmative defense that is established with respect to compliance with the paperwork/verification requirements.

International considerations

The Committee acknowledges that employer sanctions, coupled with a verification system, will not totally eliminate the problem of illegal immigration. As long as there is an economic imbalance between the sending countries and the United States, the pressure to migrate to this country will continue.

For obvious jurisdictional reasons, the Committee is unable to address the severe economic "push factors" in the various developing countries, that have traditionally produced large numbers of undocumented aliens. It is the consensus of the Committee that bilateral and multilateral cooperation is essential to respond to this international phenomenon—the movement of people legally and illegally across international borders.

In particular, the Committee is convinced of the need for close and continuous contact between the U.S. and Mexico during the implementation of this legislation. Committee Members have consistently voiced their strong support for generous bilateral programs to assist Mexico in reducing the economic pressures to emigrate—temporarily or permanently—to the U.S.

The Select Commission also recognized the importance or international cooperation on migration issues and unanimously recommended that "the U.S. expand bilateral consultations with other governments, especially Mexico and other regional neighbors, regarding migration."

The Committee clearly recognizes the long-range nature of these suggestions, but firmly believes that bold bilateral measures and other diplomatic initiatives must be taken as this legislation is implemented.

Immigration enforcement activities and authorization of appropriations

Increased enforcement measures and greater attention to the "service to the public" activities by the Immigration and Naturalization Service (INS) are deemed to be two essential elements of the program for immigration reform and control embodied in this bill.

In the past, INS has been undermanned, ill-equipped and generally overwhelmed by its responsibilities under the Immigration and Nationality Act (INA). The Committee has long been aware of these shortcomings and has consistently sought to raise the level of INS resources over the years. There is no doubt that the undocumented alien problem facing the nation today, which this bill seeks to correct, is largely due to the lack of attention to and appreciation for the INS mission by the Department of Justice.

Many Members have expressed reservations that sufficient resources will be requested by the Administration to enable INS to adequately carry out the provisions of this bill. Some have advocated postponing the implementation of some mandated programs in order to observe whether there is a real commitment to provide necessary funding.

To respond to these concerns, Section 111 of the bill specifically calls for an increase in the Border Patrol and other INS enforcement activities.

This section further calls for increases for examinations and other INS service to the public activities for purposes of ensuring prompt and efficient adjudication of petitions and applications.

To insure that sufficient funding is available, the bill authorizes increased appropriations for INS and the Executive Office of Immigration Review (EOIR) in the Department of Justice.

For INS, the additional authorization level of FY 1986 is $422 million and for FY 1987, it is $419 million. These additional funds are intended solely for the enforcement and implementation of the provisions of this legislation and are in addition to the normal authorization levels annually recommended by this Committee.

Because of an anticipated increase in litigation cases due to the enactment of this bill, EOIR is authorized an additional sum of $12 million for FY 1986 and $15 million for FY 1987 for increased personnel. These funds are also to be considered over and above the annual authorization levels.

Within the scope of the INS improved services called for by this bill, it is mandated that INS enhance its community outreach capabilities and provide greater in-service training for its personnel.

As a guideline for the utilization of these funds by INS, the Committee foresees the expenditure of some $180 million on enforcement, $20 million on inspections, and $19 million on adjudications for FY 1986. The remainder of the funds will be used in the implementation of legalization and employer sanctions programs. The greater portion of the funds for legalization is expected to be reimbursed by fees charged to applicants. This breakdown will also apply to the FY 1987 authorization.

Section 111(d) requires the Attorney General to report within 6 months after enactment to the Judiciary Committees of both the House and Senate, and any other appropriate Committees, on Automatic Data Processing (ADP) requirements for INS.

In addition, the Attorney General is to assure that any ADP acquisitions by INS are made in accordance with existing law and with prior review of and approval by the Administrator of General Services.

INS has assured the Committee that it has closed out all procurement under the contract referred to as Acquisition II.

The matter of ADP acquisition by INS addressed in this bill was prompted by a GAO report issued in March, 1986. This report raised certain questions with regard to INS violating and departing from Federal procurement regulations, paying excessive prices, and lacking a long-range ADP plan. The report further concluded that INS should cease ordering equipment against the current contract, measure and validate its requirements and recompete its computer needs.

Although INS has taken exception to some of the GAO findings, it has already stopped all procurement under the Acquisition II contract. It is reassessing its long-range requirements and does not expect to make any new acquisitions until 1987 at which time the requirements will have been identified and negotiated with the Administrator of General Services and appropriate Congressional Committees.

In the meantime, INS has already made arrangements with appropriate Congressional Committees interested in the matter to

rectify past errors and move in compliance with the wishes expressed.

Section 113 calls for the development of an Immigration Contingency Plan and the creation of an Immigration Emergency Fund. Both of these initiatives are considered essential as a result of the difficulties experienced during the Mariel boatlift in April, 1980. For the first time the United States became a country of first asylum. Whatever government emergency plans that existed within the government at that time did not contemplate a large-scale influx of this nature.

INS was ill-prepared to face the necessities of controlling a massive sealift of undocumented aliens who had to be processed on entry, screened, released to relatives, detained where necessary, and generally had to be provided temporary relief and shelter.

This bill requires the Attorney General to consult with the Judiciary Committees of the House of Representatives and the Senate, as well as State and local governments to provide for a contingency plan in the event of an immigration emergency. The plan is to include provisions for the allocation and management of personnel and resources to meet such an emergency.

As an adjunct to this contingency plan, the bill authorizes to be appropriated a sum of $35 million to establish an immigration emergency fund in the Treasury to be used in accordance with such plan. The fund is to be used only after the President determines that an immigration emergency exists and so certifies to the Judiciary Committees of both houses of Congress.

The fund will provide resources for an increase in Border Patrol or other enforcement activities of INS and for reimbursement to States and localities providing any assistance required by the Attorney General in meeting the emergency.

At the time of the Mariel boatlift, there was no contingency fund upon which INS could draw to face extraordinary expenses caused by the emergency. It, therfore, had to utilize resources out of its normal operating funds. This forced INS to reprogram funds and curtail essential activities in other programs in order to make resources available for the emergency. Although the Service was eventually reimbursed for these extraordinary expenditures, the effects suffered by cuts in these other programs were disastrous.

For these reasons, a contingency fund is mandatory in order to permit INS to carry out its normal responsibilities in times of emergencies.

Smuggling and related offenses

Section 112 of the bill would modify the existing law regarding smuggling and related offenses to expand the scope of activities proscribed. The Committee believes such modifications are essential in light of recent judicial opinions which have interpreted existing law as not applying to certain activities that clearly are prejudicial to the interests of the United States.

Specifically, section 112 is designed to correct the shortcomings and ambiguities in existing law identified in *United States* v. *Anaya*, 509 F. Supp. 2289, *en banc*, (S.D. Fla. 1980, Aff'd on other grounds, *sub nom. United States* v. *Zayas-Morales*, 685 F. 2d. 1272 (11th Cir. 1982)) and in *United States* v. *Zayas-Morales* as well. The

issue in *Anaya* was whether current law (U.S.C. 1324(a)(1)) would subject to criminal prosecution certain boat owners and crew members who willingly and knowingly transported undocumented Cuban nationals to the United States during the Mariel boatlift of 1980. Of crucial significance was the fact that the defendants in the case made no effort to land undocumented Cubans surreptitiously or evasively, but instead brought them directly to immigration officers in Key West. Because existing law makes it a felony for anyone to "bring into" the United States an undocumented alien, the issue became the meaning of the term "bring into." The district court, sitting *en banc*, resolved this issue by holding that "bring into" is synonymous with "entering", and that since none of the undocumented Cubans ever "entered" the United States the indictments had to be dismissed.

On Appeal, the district court decision was affirmed, but for different reasons, *United States* v. *Zayas-Morales, supra.* The Court of Appeals focused on the defendants' state of mind and held that because the defendants lacked general criminal intent, (i.e, the intent to commit an illegal act), they could not be prosecuted under section 1324(a)(1).

The Committee is convinced that this gap in current law must be closed. Without the threat of criminal prosecution, there is no effective way to deter potential transporters from inundating U.S. ports of entry with undocumented aliens. As happened during the Mariel episode, the United States would be forced to expend extraordinary amounts of money and human resources in processing, monitoring, caring for and giving hearings to exorbitant numbers of people. Accordingly, the bill clarifies that a person who knowlingly transports an undocumented alien to any place in the United States will be subject to criminal prosecution if that person knew the alien was undocumented or acted with wilful blindness concerning the alien's immigration status. Absent aggravating circumstances, the maximum penalty would be a fine of $5,000 and up to 1 year in jail for each transaction. With aggravating circumstances (e.g., if the offense was committed for gain) the maximum penalty would be $10,000 and 5 years imprisonment for each transaction.

Additionally, the bill increases the penalties for (1) knowingly bringing aliens, whether documented or not and whether an entry occurs or not, to any place in the United States other than designated ports of entry; (2) knowingly transporting within the United States undocumented aliens known to be such (or with wilful blindness to immigration status), and (3) knowingly harboring or concealing undocumented aliens anywhere in the United States. In each case, the maximum penalty would be a fine of $10,000 and five years imprisonment for each alien involved.

Verification of alien status under certain progams

Section 121 of the bill requires States, beginning on October 1, 1988, to verify whether alien applicants for certain public assistance programs are in a lawful immigration status and thus eligible for participation in the programs. The programs covered are AFDC, Medicaid, Unemployment Compensation, Food Stamp program, Supplemental Security Income, Housing Assistance and Higher Education Assistance.

Congress, by law, has specifically disqualified undocumented and nonimmigrant aliens from certain of these progams. Regrettably, Federal, state and local agencies have not taken adequate steps to enforce these prohibitions. The INS believes that significant numbers of ineligible aliens are receiving assistance and that a verification procedure for alien applicants will result in a considerable cost saving for the Federal Government.

In order to comply with the requirements of this bill, a State must require all applicants to declare in writing under penalty of perjury whether they are citizens or nationals of the United States or aliens in a satisfactory immigration status. "Satisfactory immigration status" is defined as any immigration status which does not render an individual ineligible for benefits under the applicable program. A non-citizen or national of the United States must present to the State agency an alien registration document, other proof of immigration registration from the Immigration Service containing the file number of the alien, or other documents that constitute reasonable evidence indicating a satisfactory immigration status.

The bill further requires the State to then verify the declared immigration status of the non-citizen or national through an automated or other designated system, utilizing the applicants alien file or alien admission number given on the documentation. It also requires that any verification system designated by the INS shall protect the individuals privacy to the maximum degree possible. The designated system must be operative by October 1, 1987.

The verification provision in the bill had its genesis in the Systematic Alien Verification for Entitlements project, know as SAVE, implemented over the last two years by the INS in voluntary cooperation with the States. Three States were participating fully in the program and several other States had established pilot projects in certain cities. The Committee reviewed the implementation of this voluntary program and, while agreeing with the intent of the progam, had several concerns. These concerns related to perceived inadequacies of the INS' data base and the potential misuse of the information available through the verification procedure.

For this reason, the bill contains crucial protections for both the individual's undergoing verification and the States implementing the procedure. The bill provides each individual undergoing verification a reasonable opportunity to submit evidence to the State showing a satisfactory immigration status. In addition, the State is prohibited from delaying, denying, reducing, reducing, or terminating the individual's benefits pending the submission of evidence showing satisfactory immigration status or pending the verification of that evidence by the INS. Upon denial of benefits the individual must be afforded the applicable fair hearing process. Finally, the Committee protects the States implementing the verification procedure from any liability for error in determining eligibility due to compliance with the requirements of this provision or the delay of the INS.

The bill prohibit the INS from using the verification procedure or the information obtained from it for administrative (non-criminal) immigration enforcement purposes. The Service has declared this to be the policy of the program from the beginning of the pro-

gram and the bill specifically reaffirms that policy. Most important, the Committee states unequivocally that the program shall be implemented in a non-discriminatory manner without regard to an individual's nationality, race, color, sex, or religion. The Committee intends to closely monitor the implementation of this provision.

Because the cost and relative impact of this program are uncertain, the Committee provides 100 percent reimbursement to the State to cover the costs of implementing the verification procedures.

ANTI-DISCRIMINATION

Numerous witnesses over the past three Congresses have expressed their deep concern that the imposition of employer sanctions will cause extensive employment discrimination against Hispanic-Americans and other minority group members. These witnesses are genuinely concerned that employers, faced with the possibility of civil and criminal penalties, will be extremely reluctant to hire persons because of their linguistic or physical characteristics.

Representative Robert Garcia testified that "as a shorthand for a fair identification process, employers would turn away those who appear 'foreign', whether by name, race or accent" (Joint Hearing Before the House Subcommittee on Immigration, Refugees, and International Law and the Senate Subcommittee on Immigration and Refugee Policy, Anti-Discrimination Provision of H.R. 3080, Serial No. 35, p. 111; hereinafter cited as 1985 Joint Hearings).

The Committee does not share the view that wholesale employment discrimination will necessarily result from the enactment of sanctions and notes that GAO's recent study of sanctions laws of other countries did not document such discriminatory impacts. Nevertheless, the Committee does believe that every effort must be taken to minimize the potentiality of discrimination and that a mechanism to remedy any discrimination that does occur must be a part of this legislation.

In this regard, the bill does provide substantial protections against discrimination in the form of a uniform verification process for all new hires and extensive monitoring and reporting requirements on the discrimination issue. It also established a Special Counsel in the Department of Justice, appointed by the President, by and with the advice and consent of the Senate, to investigate charges of employment discrimination based on national origin (in certain cases) or citizenship status.

Regarding the need for an anti-discrimination provision, Richard Keatings, Chairman of the ABA's Coordinating Committee on Immigration Law testified as follows:

> Any perceived or likely ill-effects, especially where they concern discrimination . . . in the workplace must be protected against even if such feared results never occur . . . So anti-discrimination protections are essential to this bill if only to protect against a result we all hope will never occur . . . There is no reason to avoid instituting anti-discrimination machinery if one is convinced it will never be needed. There is every reason to insist on the inclusion of

> such provisions if it is possible that they might become necessary. (1985 Joint Hearings, p. 159, 161)

In the last Congress, the House recognized the need for including an anti-discrimination provision and adopted the so-called "Frank amendment" by an overwhelming vote of 404-9. The version of that amendment that is included in H.R. 3810 reflects the lengthy discussions and compromises that were made on this provison during the conference deliberations in 1984.

National origin and status discrimination

Title VII of the Civil Rights Act protects individual from discrimination based on race, religion, color, sex or national origin. The prohibition covers private employers of 15 or more persons.

In the landmark case, *Espinoza* v. *Farah Mfg. Co.*, 414 U.S. 86 (1973), the Supreme Court observed that:

> Title VII protects all individuals from unlawful discrimination whether or not they are citizens of the United States . . . Certainly it would be unlawful for an employer to discriminate against aliens because of race, color, religion, sex or national origin—for example, by hiring aliens of Anglo-Saxon background but refusing to hire those of Mexican or Spanish ancestry, 414 U.S. at 95.

Nonetheless, the *Farah* Court found that nothing in Title VII prohibits discrimination based on alienage. The Court held that "aliens are protected from illegal discrimination under [Title VII], but nothing in [Title VII] makes it illegal to discriminate on the basis of citizenship or alienage." 414 U.S. at 95.

The Committee notes that permanent resident aliens are admitted to this country with the expectation that they do not become public charges. In the event they do so, they become subject to deportation. The Supreme Court has consistently held that such aliens are "persons" under the Fourteenth Amendment and are entitled to equal protection of the laws. In fact, as far back as 1915, the Supreme Court recognized the importance of a permanent resident's right to work and called it the "very essence of personal freedom and opportunity that it was the purpose of the (Fourteenth Amendment) to secure" *Truax* v. *Raich*, 239 U.S. 33, 41 (1915).

A long line of Supreme Court cases clearly establish that a permanent resident alien's right to work in this country is of fundamental importance and cannot be abridged except for compelling reasons.

For example, a State violates an alien's Fourteenth Amendment due process and equal protection rights if, without compelling reasons, it limits his or her right to work (either for the state or anyone else) because of alienage. "Classification based on alienage are subject to strict judicial scrutiny. Statutes containing classifications of this kind will be upheld only if the State is able to satisfy the burden of demonstrating that this purpose or interest is both constitutionally permissable and substantial, and that its use of the classification is necessary to the accomplishment of its purpose or the safeguarding of its interest." *Examining Board of Engineers* v. *Flores de Otero*, 426 U.S. 572 (1976).

On several occasions the Supreme Court has held unconstitutional state statutes that did not meet the aforementioned test. In *Sugarman* v. *Dougall*, 413 U.S. 634 (1973), for example, the Court declared invalid a state law excluding lawful resident aliens from the competitive civil service. Similarly, a state may not prohibit an alien from practicing law. *In Re Griffiths*, 413, U.S. 717 (1973). Nor may a state prevent lawful resident aliens from becoming civil engineers. *Examining Board* v. *Flores de Otero*, 426 U.S. 572 (1972).

The Committee does not believe barriers should be placed in the path of permanent residents and other aliens who are authorized to work and who are seeking employment, particularly when such aliens have evidenced an intent to become U.S. citizens. It makes no sense to admit immigrants and refugees to this country, require them to work and then allow employers to refuse to hire them because of their immigration (non-citizenship) status. Since Title VII does not provide any protection against employment discrimination based on alienage or non-citizen status, the Committee is of the view that the instant legislation must do so.

Prohibited discrimination and coverage

To accomplish this objective, the bill makes it an "unfair immigration-related employment practice" to discriminate with respect to hiring, firing, recruitment or referral for a fee based on national origin or citizenship status. Specifically exempted from coverage are: (1) employers of three or fewer persons; (2) those covered under title VII for national origin discrimination (i.e. employers of fifteen or more); (3) discrimination because of citizenship status which is otherwise required in order to comply with law, regulation, or executive order, or required by Federal, State, or local government contract, or which the Attorney General determines to be essential for an employer to do business with an agency or department of the Federal, State, or local government; and (4) discrimination against an individual on the basis of the individual's English language skill in those certain instances where the English language skill is a bona fide occupational qualification reasonably necessary to the normal operation of that particular business or enterprise.

Further, insofar as aliens are concerned, the protection against discrimination extends only to those who have evidenced "an intention to become a citizen of the United States through completing a declaration of intention to become a citizen." The aliens referred to are permanent residents, legalized aliens, refugees and asylees. The bill also makes it clear that U.S. citizens can challenge discriminatory hiring practices based on citizenship or non-citizenship status.

The bill also precludes the filing of charges with the Special Counsel under the bill if similar charges have been filed with the Equal Employment Opportunity Commission (EEOC) under Title VII and vice versa.

In any unfair immigration-related employment practice complaint, the Special Counsel (or complaining party) will carry the burden of proving that discrimination has occurred. The bill contemplates that different forms of evidence may be introduced to support a discrimination complaint. The committee emphasizes that the anti-discrimination provisions of the bill will not create a preference based on national origin or citizenship status. Nor shall

any employer charged with an individual act of discrimination be liable for having chosen either of two equally qualified applicants.

Enforcement mechanism

As noted above, the bill requires the President to appoint a Special Counsel for Immigration-Related Unfair Employment Practices in the Justice Department. The Special Counsel, who has a four-year term, is charged with the responsibility of investigating and prosecuting discrimination charges filed under the legislation.

The process of enforcement would begin with the filing of a charge by an aggrieved individual with the Special Counsel. The Special Counsel would then investigate the charge and decide whether or not to file a formal complaint with an Administrative Law Judge (ALJ). If no complaint is filed within 120 days of receipt of the charge, the aggrieved individual may file a complaint directly with the ALJ when it involves a "knowing and intentional discriminatory activity or a pattern or practice of discriminatory activity."

Actions brought by the Special Counsel shall be tried before ALJ's who have been specially designated by the Attorney General as having received special training in employment discrimination matters.

Upon receipt of a complaint, the ALJ will cause it to be served on the party charged. The party charged would be entitled to a hearing. A person found to have engaged in prohibited discrimination will receive a cease and desist order. He may also be compelled to: (1) hire the aggrieved individual; (2) provide back pay; (3) pay a civil penalty ($1,000 for first offense and $2,000 for any subsequent offense); (4) to retain for three years the names and addresses of all persons who apply for employment (or referral or recruitment); (5) to inspect documents and keep records (as described in the employer sanctions provisions) for each new hire; or (6) all of the above. Judicial review of ALJ decisions would be available.

The bill prohibits the filing of a complaint with an ALJ unless a charge has been filed with the Special Counsel within 180 days of the alleged discriminatory activity. Any person filing a charge with the Special Counsel is to be considered a full party to the proceedings and ALJs and judges in judicial review proceedings are authorized to award attorney's fees to the prevailing parties.

LEGALIZATION

As noted earlier in this report, the Committee believes that any equitable proposal for immigration reform must address the large population of undocumented aliens living and working in the United States, many for a long period of time. Therefore, the bill requires the Attorney General to grant legal status to those aliens who have been in the United States a substantial number of years, have developed equities here, and have abided by the laws of this country.

Eligibility for legalization

In order to be eligible for legalization under this bill an individual must show unlawful immigration status as of January 1, 1982,

continuous residence in the United States since January 1, 1982, and compliance with most of the 33 grounds of exclusion in current law applicable to all persons seeking to come to the United States. The Committee requires the applicant to have been continuously physically present in the United States since the date of enactment except for brief, casual, and innocent absences.

Technical and documentary grounds of exclusion are automatically waived. The remaining grounds of exclusion may be waived by the Attorney General for humanitarian purposes, to ensure family unity, or when it is in the national interest. However, the grounds of exclusion relating to violations of the law or engaging in persecution of others may never be waived. In addition, the Committee requires all applicants to undergo, at their own expense, a medical examination at the time of application.

The bill provides that Cuban/Haitian entrants are to be considered in unlawful status for the purposes of this section. The Committee believes that aliens in proceedings to determine unlawful status and aliens in extended voluntary departure status should also be considered in unlawful status for the purposes of this section. However, nonimmigrant aliens in lawful status who were solely in technical violation of the terms of entry shall not be considered in unlawful status due to that technical violation.

During the period of temporary residence, individuals are authorized to work and authorized to travel abroad for such brief and casual trips as reflect an intent to return to the United States to become a permanent resident or occasioned by a family obligation involving death or illness of a close relative or other family need.

After a period of one year, temporary residents shall be granted permanent resident status upon showing of continuous residence in the United States since admission as a temporary resident, admissibility as an immigrant to the United States, and basic citizenship skills. Such skills are defined as minimal understanding of ordinary English and a knowlege and understanding of U.S. history and government or pursuit of a course of study to achieve such skills. The applicant must register for the Military Selective Service if required to do so. An individual will be ineligible for permanent residence if he has been convicted of any felony or three or more misdemeanors committed in the United States.

The Attorney General may waive the requirement of basic citizenship skills in the case of an alien 65 years of age or older. In addition, any individual who meets the basic citizenship skills shall be considered to have met the requirements under section 312 for the purposes of naturalization.

The Committee intends that the legalization program should be implemented in a liberal and generous fashion, as has been the historical pattern with other forms of administrative relief granted by Congress. Such implementation is necessary to ensure true resolution of the problem and to ensure that the program will be a one-time-only program.

Processing of applications for legalization

The bill provides that applications for legalization may be filed with the Attorney General or voluntary State, local, and community organizations and individuals designated by the Attorney Gener-

al as qualified. These organizations may receive the initial applications and advise the applicants, but all decisions on applications must be made by the Attorney General following a personal interview by an INS official.

The Committee has learned that legalization programs in other countries have usually produced a low rate of participation among the eligible candidates. At least part of the reason is distrust of authority and lack of understanding among the undocumented population. The Committee hopes that by working through the voluntary agencies, the Attorney General might be able to encourage participation among undocumented aliens who fear coming forward. To assist in this endeavor, the bill authorizes the Attorney General to fund outreach service and provides for an extensive education and outreach program prior to the application period.

The files and records kept by the organizations are confidential, and not accessible to the Attorney General or any other governmental entity. The applicant must consent to the application being forwarded for official processing. The confidentially of the records is meant to assure applicants that the legalization process is serious, and not a ruse to invite undocumented aliens to come forward only to be snared by the INS.

The bill provides for serious penalties for knowingly making fraudulent representations or mistatements on an application for legalization. While the Committee expects the INS to be vigilant in its processing so the *mala fide* applicants are not given legalized status, the Committee also expects the INS to use its professional experience to differentiate between classes of applications which can be processed expeditiously and those which require more careful scrutiny. Treating each application with the same level of scrutiny may mean tremendous backlogs, unnecessary staff time on *bona fide* applicants, and insufficient scrutiny of applications which require extensive investigation.

The bill requires the Attorney General to establish regulations implementing the legalization program and defining "continuous residence." The Committee believes that the evidentiary standard for "continuous residence" should accomplish two things.

First, it should ensure the integrity of the documentation process while minimizing the incidence of fraud. Second, it should take into account the fact that some flexibility may be necessary in accepting documents in proof of continuous residence. While employment documents may constitute the most direct evidence of continuous residence, many undocumented aliens have been clandestinely employed and thus may not have the usual trail of records.

Unnecessarily rigid demands for proof of eligibility for legalization could seriously impede the success of the legalization effort. Therefore, the Committee expects the INS to incorporate flexibility into the standards for legalization eligibility, permitting the use of affidavits of credible witnesses and taking into consideration the special circumstances relating to persons previously living clandestinely in this country.

Applications for legalization will be accepted during an 18 month period beginning not later than 180 days after enactment of the bill. Aliens who are apprehended prior to the beginning of the application period and who can establish a non-frivolous case of eligi-

bility for legalization shall not be deported until they have had a chance to file for legalization, but in no case later than 30 days after the start of the period for accepting applications. Aliens who are given an order to show cause why they should not be deported and who wish to be legalized must also apply within 30 days of the beginning of the legalization application period if the order is issued prior to that date, and within 30 days of the issuance of the show cause order if it falls within the one year period.

The bill provides for limited administrative and judicial review of denials of applications for legalization. The Attorney General is to establish a single level of administrative appellate review for reconsideration of denied cases. When the administrative review is exhausted and also yields a negative decision, and when the applicant is in a deportation proceeding (but not an exclusion proceeding), the applicant can appeal a negative decision within the context of judicial review of a deportation order.

Prohibition on receipt of public assistance

A person who is legalized under the progam, or under the change in the registry date, discussed below, is not eligible for Federal financial assistance, Medicaid or food stamps for a five-year period beginning after he or she becomes a temporary resident alien, with limited exceptions.

The exceptions are that the Attorney General may, through regulations developed in consultation with the Secretary of Health and Human Services, allow federal assistance to recently legalized aliens because of age, blindness, disability, or medical conditions that require treatment in the interest of public health or because of serious illness or injury. This is an exception, not an entitlement. The Committee intends that the relevant eligibility and needs requirements under the applicable programs shall apply to the newly legalized aliens. The Committee emphasizes that these limited exceptions are not intended to be an indirect method of affording newly legalized aliens automatic access to Supplemental Security Income, Medicaid, or Medicare. The bill permits State and local governments also to limit benefits to newly legalized aliens.

The Committee believes that limited Federal medical benefits can be provided to newly legalized aliens without such benefits leading indirectly to complete access of Medicaid programs.

The Committee takes exception to the position of the Department of Health and Human Services (HHS) that a limited emergency medical program cannot be developed because it would be, in HHS' view, "disruptive, expensive, and difficult to target." The Committee expects HHS to develop and implement a limited medical benefits program in accordance with the statutory mandate set forth in this legislation.

The limitations on benefits do not apply to newly legalized aliens who prior to legalization, were Cuban/Haitian entrants or to certain educational and health programs.

The Committee is convinced that the public benefit restrictions imposed upon newly legalized aliens are constitutionally permissible. The Committee has reviewed the Supreme Court decision in *Mathews* v. *Diaz*, 426 U.S. 67 (1976) and is convinced that the restrictions contained in the Committee Amendment are authorized

by that decision. In that case a permanent resident alien challenged that portion of the Medicare law which denies eligibility to permanent resident aliens unless they have resided in the United States for five years. In upholding the statute against the plaintiff's due process challenge, the Court stated:

> In particular, the fact that Congress has provided some welfare benefits for citizens does not require it to provide like benefits for *all aliens*. * * * The decision to share that bounty with our guests may take into account the character of the relationship between the alien and his country: Congress may decide that as the alien's tie grows stronger, so does the strength of his claim to an equal share of that munificence. *Id.* at 80 (emphasis in original).

Likewise, the Committee believes that the provision of the bill that authorizes the states to deny state welfare benefits to newly legalized aliens is constitutionally sound. In this regard, the Committee notes that such restrictions would be wholly consistent with Federal policy. CF. *Plyler* v. *Doe*, 102 S. Ct. 2382 (1982) (state statute denying free public education to undocumented alien children held unconstitutional for failure to comport with Federal policy). The Committee further notes that this provision, and the provision restricting access to Federal benefits have been reviewed by the Office of Legal Counsel in the Department of Justice and found to be "constitutionally sound." (See testimony of Attorney General Smith, 1983 Immigration Subcommittee Hearings, p. 1459.)

CUBAN-HAITIAN ADJUSTMENT

During the late 1970's and early 1980's, a number of Cubans and Haitians fled the oppressive conditions in their home countries and arrived in the United States without entrance documents. This situation reached its peak in 1980 when over 100,000 Cubans and approximately 25,000 Haitians arrived. Recognizing the extreme hardship that would be involved if these individuals were deported, the Carter Administration paroled these individuals into the United States, giving them the designation "Cuban-Haitian Entrants." Since that time, the Reagan Administration has continued the parole policy. The result is that these individuals remain in the United States.

During the 98th Congress, both the House and the Senate, recognizing the inappropriateness of continuing parole for a group of people who are permanently residing in the United States under color of law and realizing that the interests of the United States would best be served if Cuban-Haitian Entrants were allowed to apply for lawful permanent residency in the United States, considered remedial legislation. Though immigration reform legislation granting that relief (H.R. 1510 and S. 529) was approved by both the House and Senate, the 98th Congress ended before the legislation could be enacted into law. In addition, a second House bill, H.R. 4853, introduced by Chairman Rodino and containing a Cuban-Haitian provision identical to the one approved by the House in the context of H.R. 1510, was unanimously passed by the House of Representatives on October 4, 1984. No separate compan-

ion bill, however, was considered by the Senate during the 98th Congress.

In 1984, the Administration determined that Cubans Entrants were eligible to adjust to permanent resident status under the terms of the Cuban Adjustment Act of 1966. Since that Act is Cuban-specific, it provided no relief to Haitian Entrants. The result has been that thousands of Cuban Entrants, but no Haitian Entrants, have had their status adjusted. The Committee believes that this is inequitable, given that the two groups came to the United States for similar reasons, under similar circumstances, at the same time.

Section 202 of the Committee bill would allow Cuban-Haitian Entrants, and Haitians not accorded that status but for whom a record was established by the Immigration Service prior to January 1, 1982, to apply for lawful permanert resident status if they have resided continuously in the United States since January 1, 1982 and are not excludable on criminal or national security grounds.

The provisions of section 202, which are identical to the provisions approved twice by the House during the 98th Congress, have been endorsed by a variety of groups and individuals. In a letter to Chairman Rodino dated April 30, 1986, and signed by representatives of the American Jewish Committee, the National Urban League, the International Ladies Garment Workers Union, the American Civil Liberties Union, Church World Service, the Hebrew Immigrant Aid Society, The National Coalition for Haitian Refugees, Bayard Rustin, Bishop Anthony Bevilacqua, and Shirley Chisholm, the writers stated:

> All major church, civil rights, legal, trade union, human rights and voluntary service organizations familiar with the plight of these refugees have unambiguously and repeatedly endorsed your proposals. Perhaps we should remind your colleagues of two features of the legislation that may be easily overlooked. First, it is an adjustment measure for a restricted group of refugees whose identities are known and who have established record with the INS. It should not be confused with a legalization legislation for a less precise number of undocumented persons. Second, this bill is not a substitute for the asylum process, nor does its merit depend on the vagueries of Cuban or Haitian politics. Rather, it is simply intended to remedy well documented wrongs and inequities, and to fulfill specific promises of two successive administrations.

The Committee concurs with these statements and believes that it is time Cuban/Haitian Entrants are granted a status that is consistent with the reality of their permanent residency in the United States.

REGISTRY DATE

The Committee updates the existing legal registry date from June 1, 1948 to January 1, 1976. The registry date provision allows the Attorney General in his discretion to lawfully admit aliens in the United States who entered prior to the established date, who

have resided in the United States continuously since, are of good moral character, and are generally admissible as immigrants.

STATE LEGALIZATION ASSISTANCE

While the Committee believes that the legalization program is not likely to be a financial burden on State and local governments but will work to their benefit, the Committee also realizes that the State and local governments have some concerns which merit serious attention. Therefore, the bill authorizes the appropriation of such sums as may be necessary to provide states with 100 percent federal non-entitlement reimbursement for five years to assist states in defraying any public assistance costs that may result from legalization. Although the bill disentitles newly legalized aliens from most programs of public assistance for five years, and although all available information indicates that newly legalized aliens, because of their demographic characteristics, would be likely to have a substantially lower public assistance asccess rate than the domestic population, the Committee believes that the legalization program should not result in increased costs to states.

For purposes of federal aid, the bill defines "programs of public assistance" as those programs, whether federal, state, or local, that provide for the basic health or subsistence needs of individuals and that are available to the population as a whcle.

Similarly, the bill provides a five-year program to assist state educational agencies in meeting education expenses caused by the enrollment of legalized alien children. Such assistance could cover services available to children residing in the state as a whole. It would not cover programs created particularly for the benefit of newly legalized children.

The Congressional Budget Office (CBO) estimates the assistance for education costs to be almost $3 billion. The entire cost estimated for legalization is around $5 billion. Therefore, education assistance comprises the single largest cost of legalization. The cost of education is estimated to be just over $3,000 per school age child. CBO estimates about 200,000 children attending school will be legalized under this legislation.

REFORM OF LEGAL IMMIGRATION

Change in colonial quota

The bill also increases the number of visas for colonies from 600 to 5,000.

In recent history, there have been a number of former colonies gaining independence, thereby becoming eligible for the 20,000 per country ceiling on immigration. The few remaining colonies experience sever backlogs in visa issuance because of the small allocation of visas. The Committee is of the opinion that an increase in visa allocation for the colonies will not adversely affect world wide immigration but will benefit substantially general immigration policy.

G-4 aliens

This provision is intended to alleviate the hardships that our immigration laws may impose upon long-time employees of interna-

tional organizations and their immediate families. Granting special status is intended to reflect the fact that some aliens who have been employed by international organizations, such as the World Bank or the United Nations, are assigned to the United States for substantial portions of their working lives during which they, and their families, fully integrate themselves into our society.

Presently, if such an employee dies or retires to their native country—often on extremely short notice—despite the fact that they have been out of touch with that country for many years. For the children, having grown up and gone to school here, they tend to become fully "Americanized." When they return home their experience difficulties in a country in whose langauge they have not been trained, whose culture is alien to their adopted culture, where they have no immediate family members and few employable skills.

The bill provides for special immigrant status only if the alien has had a certain period of residence in the United States.

In the case of an unmarried son or daughter of an official, the requisite period is 7 years between the ages 5 and 21, and in the case of the surviving spouse of the principal G alien, 15 years prior to the death of the deceased officer, and an application for benefits must be made within 6 months of death. A retired officer also must comply with a 15 year residence requirement in order to benefit under the legislation.

Only employees or dependents of those organizations granted privileges and immunities by Executive order pursuant to the International Organizations Immunities Act (59 Stat. 669) are covered by this section.

Suspension of deportation

The Committee Amendment relaxes the recent Supreme Court interpretation with respect to the seven year "continuous physical" residence requirement to qualify for suspension of deportation under section 244 of the Immigration and Nationality Act (*Phinphathya* v. *INS*, 104 S.Ct. 584 (1984) That decision held that any departure from the U.S. during the seven year period was interruptive of the residence requirement, thus making the alien ineligible for relief. This Amendment relaxes the residence requirement in the case of a "brief, casual, and innocent" departure from the U.S.

Foreign students

Section 312 of the bill requires nonimmigrant foreign students who enter the United States after the affective date of the bill to leave the country after completion of their studies. They are precluded from adjustment of status or from changing to an H or L nonimmigrant visa. If they wish to return to the United States as permanent resident aliens or in H or L status, they must first reside in their home countries or country of last residence for two years.

The bill provides certain waivers of the prohibition of adjustment of status and two-year foreign residence requirement of students:

(1) Students with advanced degrees and who have been offered a faculty position in the field of his degree,

(2) Students who have a degree in the natural sciences, mathematics, computer science or engineering and have been offered a research, business, or technical position by an employer in the field of his degree,

(3) Students who have obtained advanced degrees in business or economics and have exceptional ability and have been offered employment due to such ability.

Labor certification is a prerequisite for obtaining these waivers which sunset in 1992.

Another area where the Attorney General may waive the residence requirement is on behalf of students who have obtained a degree in a natural science, mathematics, computer science, or engineering or business who is changing status to an H-3 to receive training to enable the person to return abroad to pursue a managerial position in the same firm in which he or she received training.

These exceptions are drawn very narrowly to specific areas—faculty at universities, high technology fields, and export trade—because of the great short-term need for such persons in the U.S. The Committee has long held that American teaching institutions have access to the "best and brightest" to educate American youth and this, of course, does not always come with a "born in the U.S." label. In providing waivers for high technology fields, the Committee seeks to address some of the short term needs in these areas with the expectation they will meet the challenge of future decades with U.S. workers.

The last area of waivers for permanent residence relates to persons with expectional ability who would enhance U.S. trade and commerce because of their unique knowledge of the cultural and economic structures of foreign countries. In providing this particular waiver, the Committee acknowledges what appears to be a U.S. disadvantage in the highly competitive international trade markets due to the lack of persons who possess not only exceptional economic expertise but multilingual skills.

Foreign students who entered the country prior to the date of enactment are also subject to the limitations on adjustment of status in the United States but are not subject to the 2 year foreign residence requirement.

With the inclusion of the sunset, the Committee serves notice to the students who come to study in the United States that they should return to their home countries upon completion of their studies. Allowing these students to adjust status circumvents the normal immigration procedures turning nonimmigrants into immigrants, and contributes to the "brain drain" of resources beneficial to developing countries.

FOREIGN AGRICULTURAL WORKERS

H-2 Temporary Agricultural Worker Program

Current law allows for the temporary admission of foreign workers to perform temporary labor if a shortage of U.S. workers exists. Specifically, the law allows for the admission of a nonimmigrant alien who "having a residence in a foreign country which he has no intention of abandoning . . . is coming temporarily to the United States to perform temporary services of labor, if unem-

ployed persons capable to performing such service or labor cannot be found in this country." (8 U.S.C. § 1101(a)(15)(H)(ii)).

This program, commonly referred to as the "H-2 program" has been used extremely by agricultural employers and employers involved in the hotel and restaurant businesses. Admissions under the H-2 program generally number about 30,000 each year, though there is no statutory limit. Detailed regulations governing the program have been issued by the Employment and Training Administration in the Department of Labor (See 20 CFR Part 655) and the Immigration and Naturalization Service in the Department of Justice. (See 8 CFR 214.2(h)(3)).

In the Committee's view, these regulations do not fully meet the need for an efficient, workable and coherent program that protects the interests of agricultural employers and workers alike.

Recognizing the unique needs of growers and the inadequacy of current protections for farmworkers, the bill creates a separate and distinct H-2 program for agriculture, referred to in the bill as the "H-2A" program. Nonagricultural employers wishing to import temporary workers will utilize the H-2B program. The bill makes no changes to the statutory language concerning non-agricultural H-2's; instead it divides the program into two parts and sets forth a number of specific requirements regarding the operation of the H-2A program.

The essential feature of the H-2 program has been and would continue to be the requirement that efforts be made to find domestic workers before admitting workers from abroad. A corollary rule, again preserved in the bill, is that the importation of foreign workers will not be allowed if it would adversely effect the wages and working conditions of domestic workers similarly employed.

For purposes of the H-2A program, "agricultural labor" is to be defined by the Secretary of Labor, though it must include certain definitions currently contained in the Internal Revenue Code and the Fair Labor Standards Act.

Although the final authority to determine whether a foreign agricultural worker will or will not be admitted to the United States will continue, under the H-2A program, to rest with the Attorney General, an H-2A worker may not be admitted unless the employer seeking such foreign worker has first sought from the Department of Labor a certification that able, willing, and qualified domestic workers cannot be found and that the admission of the H-2A worker would have no adverse effect, in terms of wages and working conditions, on similarly employed domestic workers. Further, a certification may not be issued if (1) there is a strike or lockout in the course of a labor dispute which, under the regulations, precludes such certification; (2) the employer during the previous two years has been found to have substantially violated a material term or condition of a previous certification; (3) in cases where the job is not covered by state workers' compensation, the employer has not adequately assured the Department of Labor that he will provide the H-2A worker with free insurance that provides benefits at least as good as those provided under the state workers' compensation law for comparable employment; and (4) the Department of Labor has determined that the employer has not made

adequate efforts to secure domestic workers in areas where a significant number of such workers can be expected to be found.

On this last point, the Committee intends that the Department of Labor shall consider, among other things, the recruitment efforts for workers made by non H-2A employers located in the area of intended employment and the efforts made by the employer to obtain H-2A workers. The cost alone of efforts to obtain H-2A workers is not, in the Committee's view, indicative of the level of effort to recruit H-2A workers. Moreover, the Committee does not intend to impose unduly burdensome requirements upon the employer; nor is it the Committee's intent that employers be required to return continuously to areas which have not proven to be a substantial source of domestic workers notwithstanding the employers good faith efforts. The Committee believes that good faith positive recruitment must yield concrete results and the need to assure that required recruitment be cost effective.

Recognizing that future labor needs may sometimes be difficult to predict, the Committee bill specifies that growers may not be required to apply for certifications more than 60 days prior to the anticipated date of need. Further, the Department of Labor must approve the application no later than 20 days before the date of need if the grower has met the criteria for certification and domestic workers have not been procured or referred. The bill further requires that growers be notified within seven days of filing if the application does not meet the standards for approval (excluding the question whether domestic workers are available) and the reason or reasons why the application cannot be approved. In addition, the bill requires the establishment of an expedited procedure to review denials and revocations of certifications. It also requires the Department of Labor to make new determinations if able, willing and qualified workers are not actually available at the time and place needed and the certification was denied because of the availability of qualified workers. Finally, the Committee strongly urges the promulgation of regulations consistent with existing regulations regarding emergency applications.

Current Department of Labor regulations require H-2 employers to hire qualified domestic workers who apply for the job after access to H-2 workers have been granted but before half of the work period for which the H-2 workers have been admitted has expired. This is the so-called "50 percent rule." The Committee bill continues this policy for three years and, if Congress doesn't act prior to 3 months before the end of the 3 year period, directs the Department of Labor to promulgate regulations (based on a study) that will either retain, modify, or abolish the 50 percent rule after that three year period. Such regulations shall be based on findings by the Secretary of Labor which shall be in furtherance of Congressional policy that H-2 workers shall not be admitted "unless there are not sufficient workers in the United States who are able, willing, and qualified to perform the labor or services needed and that the employment of the aliens in such labor or services will not adversely affect the wages and working conditions of workers in the United States similarly employed."

The bill also specifies that in the event that an H-2A worker is displaced by a later arriving domestic worker, the employer may

not be compelled by the Secretary of Labor to pay the terminated H-2A worker for any period of time he did not in fact work. The bill also requires the Department of Labor to investigate (and issue findings on complaints by employers who allege that a person or entity has willfully and knowingly withheld domestic workers prior to the arrival of H-2A workers for the purpose of forcing the hiring of domestic workers. If the Department finds that such withholding has occurred, it is required to suspend immediately the application of the 50 percent rule with respect to that certification for that date of need. The Committee intends that this remedy be construed to be in addition to, and not in lieu of, any other state or federal remedies which may be available to the employer (or association) for the violation. If the Department's findings are based on information provided by the employer which the employer knew to be false, nothing in this section would preclude an injured worker from seeking appropriate relief.

Under current regulations, H-2 agricultural employers are required to provide workers with free housing. The Committee bill continues this basic policy, but with certain modifications. Under the Committee bill, employers will be permitted, at their option, to provide housing that meets applicable federal standards for temporary labor camps or to secure housing that meets the local standards for rental or public accommodations (or both) or other substantially similar class of habitation. In the absence of local standards, state standards will apply, and if there are no applicable state standards either, federal temporary labor camp standards will apply. The bill also requires that free, family housing be provided to those who request it whenever it is the prevailing practice in the area and occupation of intended employment to provide family housing. In this regard, the Committee intends that the Department of Labor shall conduct regular, periodic surveys to determine the prevailing practice in an area and occupation with respect to the provision of family housing.

Currently, associations comprised of individual members are permitted to file applications for certifications for the benefit of their members. The Committee bill specifically authorizes the continuation of this practice and sets forth several rules regarding the legal responsibility of each party involved when a violation, sufficient to cause denial of certification, occurs. First, if the violation is committed by an association member, neither the association nor any other member of it may be denied certification unless it can be shown that the association or other member participated in, had knowledge of, or had reason to know of, the violation. Second, if the violation is committed by an association and the association is a joint employer, no member of the association may be denied certification unless it can be shown that the member participated in, had knowledge of, or had reason to know of, the violation. Third, in cases where the association is a sole employer and has committed and act that results in denial of certification, no member of the association may be the beneficiary of the services of H-2A workers during the period such denial is in force, unless the member employs H-2A workers either directly or, if through an association, jointly.

It is the Committee's intent that the association liability language contained in subsection (d) encourage growers to police themselves concerning the obligations mandated by participation in the H-2A program. In this regard, it should be noted that the debarment remedy available to the Department of Labor is discretionary and that where growers have knowledge of, or had reasons to know of, a violation and in a timely manner voluntarily make the Department aware of such violation, it is not the Committee's intent that such growers be debarred merely because of their affiliation with an association or grower violation. The Committee does not intend to burden the grower with an affirmative obligation to actively investigate more rumor or innuendo concerning other grower or association activity.

Special Agricultural Worker Program for Perishable Crops

Extensive testimony was received to the effect that employer sanctions will result in the removal of substantial numbers of undocumented individuals from the agricultural work force. Agricultural interests, particularly western growers of perishable agricultural commodities (basically, fresh fruits and vegetables) have come to rely heavily on the existence of an undocumented work force. As Deputy Secretary of Agriculture John R. Norton III testified before the Subcommittee on Immigration, Refugees, and International Law on September 30, 1985,

> In agriculture, undocumented workers are primarily engaged in seasonal harvest work throughout the U.S. As we move toward implementation of employer sanctions, we must at the same time prevent labor shortfalls and dislocations which have the potential to disrupt harvests and interfere with marketing process. The national economy and the American consumer depend upon a stable and adequate supply of agricultural labor to maintain commodity supplies at reasonable price levels.

Deputy Secretary Norton further noted that "failure to provide access to a legal work force will result in loss of production of some crops, loss of sales to other countries, further damage to our balance of payments, higher prices for American consumers and loss of American jobs in supporting activities such as packing, hauling, refrigeration, marketing, and other related industries."

In evaluating the best method of responding to these concerns, the Committee was ever mindful of the reports of abuses that occurred during the old Bracero program (P.L. 82-78) and had no intention of creating an environment conducive to the violation of worker rights. In this regard, the September 30th testimony of the Western Growers Association in support of a foreign agricultural worker program is particularly relevant:

> The Bracero program has been likened by some to indentured slavery where employer exploitation was rampant and inhumane. This is something we envision being avoided in our proposal. The worker would have freedom of movement in a whole area, where he could seek to better himself, rather than be tied to the land of a single

> employer. Some of the abuses that took place under the Bracero program can be directly attributed to the way the program was administered. The most glaring problem was the contractual relationship that existed requiring an employee to work for one employer. This, some argue, gave employers the ability to require more from Bracero workers based on a threat or promise they would be sent back to Mexico. Additionally, Bracero workers were not covered by state laws pertaining to wages, hours and working conditions. No minimum wage existed and agricultural workers were exempt from the National Labor Relations Act. This, again some argue, led to an abuse of the system. Lastly, there was no real monetary commitment by our government to oversee the program and monitor its implementation. These are the main causes for the program's criticism and ultimate demise.

Accordingly, the Committee believes that the most effective way to respond to Western grower concerns regarding the availability of labor and at the same time to protect workers to the fullest extent of all applicable federal, state and local laws is to provide workers with the option of switching jobs and to provide them with a status that ensures that their employment is fully governed by all relevant law without exception. Noteworthy in this regard are the comments of the President of the Farm Labor Alliance, Michael V. Durando, who testified that the present environment, which is characterized by significant grower reliance on undocumented workers, is extremely effective in meeting Western growers' needs because it is based on the free market system. Mr. Durando stated that

> The system is unstructured but it is highly effective in providing the necessary manpower to harvest a large number and variety of crops that ripen in rapid succession and which are highly susceptible to changes in weather conditions. The fact that the system is so effective should not be surprising because what it does, in simplest terms, is employ the basic principles of a free market system—supply and demand.

Most consistent with the objective of creating a free-market atmosphere within the sphere of agricultural employment in perishable agricultural commodities in the United States is to permit any workers who now or in the future may be allowed to perform perishable agricultural labor in the United States to become lawful permanent resident aliens of the United States. As former Secretary of Labor Ray Marshall has stated, "If in future years we establish a clear and pressing need for additional workers, it would be better to admit such workers as immigrants with full legal rights than to admit them as guest workers with seriously circumscribed rights." "Guest workers: No Need, No Justification," AFL-CIO American Federationist, August 1981, p. 19. Consistent with that recommendation, the bill provides for the admission or adjustment of special agricultural workers for perishable crops; such workers are to be admitted not as nonimmigrants (i.e. not as guest

workers) but as lawful permanent resident aliens of the United States.

The program contained in the bill may, for purposes of analysis, be considered two distinct programs in one, each of which allows for the adjustment or admission of "special agricultural workers" who will be admitted for the purpose of performing "seasonal agricultural services" and who will be granted lawful permanent resident status.

The initial program consists of a process whereby individuals having employment experience in perishable crops will be allowed to become permanent resident aliens if they are not excludable and apply within the 18 month application period. The second program would permit in future years the admission or adjustment of additional lawful permanent resident aliens, with the number to be admitted determined under a formula that takes into account the number admitted or adjusted under the initial program, the number of aliens from that program who continue to work in perishable crops and any events or lesser need (or no need) for additional workers. This is discussed more fully below.

During the two-year period immediately following enactment, growers of perishable commodities will be fully exempted from employer sanctions. This period coincides with the initial start-up period of six months and the application period of 18 months. Despite this exemption from employer sanctions, however, it will be unlawful during the application period for any person or entity (including a farm labor contractor) to recruit an unauthorized alien who is outside the United States to enter the United States for the purpose of performing seasonal agricultural services. This prohibition, however, does not apply if the person or entity reasonably believes that the alien is authorized to perform seasonal agricultural services. A person who violates this prohibition will be subject to employer sanctions. In effect, this is an exception to the general rule that employer sanctions will not apply during the application period. As for smuggling and related types of offenses, the prohibitions contained in section 112 of the bill would remain applicable.

"Seasonal agricultural services" is defined as the performance of field work related to planting, cultural practices, cultivating, growing and harvesting of fruits and vegetables of every kind and other perishable commodities, as defined in regulations by the Secretary of Agriculture. The definition is intended to cover field work performed with respect to fruits, vegetables, and other perishable commodities, including perishable horticultural commodities, such as flowers, as well as fruits and vegetables (such as raisins and prunes) which, although picked fresh, are later dried or otherwise processed before consumption. The term does not cover work in packing houses or canneries or the transportation of farm produce other than that normally involved in field work, nor does it include crops that are not traditionally associated with labor-intensive field operations.

The program under which the intial group of permanent resident aliens to work in perishable crops (i.e., seasonal agricultural services) is created is contained in section 302 of the bill. First, it should be noted that nothing in the bill requires that an individual wishing to become a special agricultural worker (and therefore a

lawful permanent resident alien) be in an undocumented status at the time of filing or at any other time. Second, individuals wishing to apply may do so either inside or outside the United States. For those wishing to apply from abroad, the Attorney General, in cooperation with the Secretary of State, is instructed to provide a procedure whereby such aliens may apply for adjustment of status at an appropriate consular office outside the United States. Third, in order to be eligible, an alien will have to demonstrate that he/she has worked at least 60 man-days in seasonal agriculture during the 12-month period ending on May 1, 1986. And fourth, the alien must demonstrate that he/she is not excludable under existing immigration law, though certain grounds of exclusion—primarily the grounds relating to possession of valid entry documents—are waived. Aliens who would likely become public charges would be excludable, though this exclusion could be waived by the Attorney General for humanitarian purposes or to assure family unity or when it is otherwise in the public interest. This is not a discretionary program; any alien meeting the above described requirements will become a lawful permanent resident alien of the United States with full preference petititioning rights and full access to those programs of public assistance available to other lawful permanent resident aliens of the United States. The number of aliens admitted or adjusted under this section would not be deducted from any of the ceilings that currently limit the number of permanent resident aliens who may be admitted to the United States. It should be noted that derivative permanent resident status would not be available under the program; admitted or adjusted aliens would have to utilize the existing preference system if they wished to bring family members into the United States.

The bill establishes a mechanism to determine whether despite the adjustments of status made under section 302 growers of perishable crops will need additional workers in future years. If such need is demonstrated, additional workers, again admitted as lawful permanent resident aliens, will be admitted in those future years.

Subject to certain numerical ceilings, the number of additional workers (hereinafter, "replenishment workers") that may be admitted in any given future year is determined as follows: Before the beginning of each fiscal year (beginning with fiscal year 1990) the Secretaries of Labor and Agriculture will jointly determine whether or not a labor shortage exists. This determination will be made by subtracting the supply of man-days in seasonal agriculture services from the number of man-days needed and dividing that number by the number of man-days of work the average worker can be expected to perform in a year.

The need is determined by calculating the number of man-days of labor performed in seasonal agricultural services in the previous fiscal year and adjusting that number to take into account any crop damage caused by an absence of labor, the growth of contraction in the overall industry, and the impact of technology and personnel practices on the need for labor. In this regard, the adjustment under paragrph (3)(B)(ii)(II) in the need for workers is intended, among other things, to take into account the effect to mechanization in seasonal agricultural services. However, this provision is not intended to require agricultural employers to adopt changes in

their current technologies or personnel practices. Rather, it is intended to reflect those improvements which the Secretaries can reasonably expect will occur in these areas over time and will significantly affect the need for special agricultural workers.

The supply is determined by calculating the number of man-days worked in the previous year and adjusting that number to take into account the retirement and movement of workers out of seasonal agricultural services and the additional number of man-days in seasonal agricultural labor that can be expected to result by the introduction of new workers into the seasonal agricultural labor pool. The bill also provides a procedure to allow for increases in the shortage number if extraordinary and unforeseen circumstances indicate that the need for replenishment workers is less than anticipated.

The Committee anticipates that the emergency increase provision would apply in cases of an unanticiapted bumper crop, a significant change in weather conditions or cropping patterns, or other significant changes that could not have been reasonably predicted or accounted for in the original determination of the shortage number for a fiscal year. It is not designed or intended to deal with localized, short-term problems that individual farmers may have in obtaining needed seasonal agricultural workers. The emergency provisions of the replenishment worker section are intended to provide for an increase where there was a significant understating of the shortage number needed for a fiscal year. Any increase in the shortage number resulting from an adjustment under this provision cannot result in more aliens getting special agricultural worker status than is permitted under the numerical limitation of subsection (b).

Paragraph (4)(D) is intended to clarify that, unlike the H-2 program, there is no authority under the special agricultural provisions to compel employers employing special agricultural workers to pay any adverse effect wage rate or to provide wages and working conditions that may not adversely affect other individuals similarly situated. On the other hand, this language should not be construed as preventing the Secretaries of Labor and Agriculture from assuming, for purposes of paragraph (4)(A), that employers might be expected to increase wage rates and improve working conditions over time in order to attract needed workers, so long as such assumptions are consistent with no significant adverse affect on the competitiveness of the perishable agricultural industry. In making adjustments under paragraph (4), the Committee anticipates that the Secretaries will use wage surveys gathered by USDA and BLS and other government agencies.

There are numerical limits on the number of replenishment workers that can be admitted in any given future year. In fiscal year 1990 the maximum number of replenishment workers who may be adjusted or admitted will be equal to 95 percent of the number of special agricultural workers originally adjusted minus the number of special agricultural workers who worked in perishable agriculture in fiscal year 1989 (as determined by the Census Bureau). In fiscal years 1991 through 1994, inclusive, the maximum number is equal to 90 percent of the ceiling in the previous year minus the number of special agricultural workers (both original

and replenishment) who worked in perishable agriculture the previous year. In each fiscal year after 1994 the ceiling is equal to 95 percent of the previous year's ceiling minus the number of special agricultural workers (original and replenishment) who worked in perishable agriculture in the previous year.

Replenishment workers can be admitted from outside the United States or may be adjusted if they are inside the United States. Special priority consideration should be given to those aliens who have continuously resided in the United States since May 1, 1986. No agricultural experience requirement need to be met by persons wishing to become replenishment workers.

Replenishment workers must work in perishable agriculture for at least 60 man-days during each of their first two years in the United States as special agricultural workers. Failure to do so is grounds for deportation. In appropriate individual cases where, because of extraordinary, unusual, and unique circumstances beyond an alien's control (such as accident or injury verifiable by medical evidence) an alien is unable to work the required 60 man-days in seasonal agricultural services in the first or second year, the Committee intends that the Attorney General may exercise his discretion not to seek deportation of the alien under section 241(a)(20) of the Immigration and Naturality Act. However, if a replenishment special agricultural worker does not work the 60 man-days, the worker will not get credit for the year toward naturalization. Further, in order to be eligible to apply for U.S. citizenship, replenishment workers must first demonstrate that they have worked at least 60 man-days in perishable agriculture for five years after becoming special agricultural workers.

The Committee intends that employers who provide transportation assistance, directly or indirectly, for replenishment special agricultural workers must provide comparable assistance to other seasonal agricultural workers. For example, if an employer furnished interest-free travel loans for replenishment workers to travel to the work site, the employer would have to furnish similar interest-free travel loans to other seasonal agricultural workers.

As with other immigration-related provisions, the Committee recognizes that States are preempted from enacting laws that restrict the entry of aliens who are provided permanent residence as a result of the special agricultural worker provisions. States are also preempted from discriminating against these aliens in the treatment otherwise provided to permanent resident aliens. This preemption does not apply so as to preempt State laws (such as agricultural labor-management relations acts) that regulate the wages and working conditions of seasonal agricultural workers generally.

A State may not treat the special agricultural workers under § 303 and § 304, and the employers of these workers, any differently than other agricultural workers and employers.

CONGRESSIONAL REPORTING REQUIREMENTS

Triennial reports concerning immigration

Section 401 of the bill seeks to correct a void in the Government's ability to obtain sufficient data to enable responsible officials to plan and execute sound immigration policies. It requires

the President to submit a comprehensive report on general legal admissions three years after enactment of this bill and every three years after.

The report, among other matters, will include the number and classifications of aliens admitted; an estimate of the number who entered without visas and became deportable during the period and a description of the impact of admissions on all facets of American life, i.e. economic, social, educational, environmental, etc.

The report is to conclude with recommendations on changes in numerical limitations on immigration or on other policies bearing on the admission and entry of aliens.

Congress has plenary jurisdiction over immigration matters. The policies on immigration are carried out by four separate U.S. agencies: refugees are the responsibility of the Departments of State, Justice and Health and Human Services; immigrants are the responsibility at various times and in various stages of the Immigration and Naturalization Service in the Department of Justice, the Department of State for visa issuance and allocation and the Department of Labor for certification of employment conditions for immigration purposes.

Because of this diversification and the importance attached by each to its responsibilities, any attempt to establish meaningful flexibility in this country's immigration program is difficult.

At various times proposals have been forthcoming on the establishment of a permanent governmental body to institute a flexible immigration law. In 1953, the Truman Commission Report proposed an immigration board as an independent agency separate from the Department of Justice and State to advise on immigration ceilings and quotas consistent with conditions in the United States.

In 1963, under President Kennedy, both the House and Senate introduced legislation to establish a permanent immigration board for the same purpose but again with no results.

As late as 1980, the Select Commission on Immigration and Refugee Policy framed a proposal for an independent regulatory immigration and refugee council. The council was to recommend 3 to 5 year targets on annual immigration ceilings after having made in-depth studies. These recommendations were never translated in law.

H.R. 3810 is legislation designed to present solutions to the illegal immigration problem presently facing the nation. Its enactment may produce unforeseeable impacts on legal immigration.

The Presidential reports cited in this section will enable the executive agencies and the Congress to review and study our immigration and refugee programs and to consider possible changes to them with the benefit of reliable and detailed data.

Reports on unauthorized alien employment and discrimination in employment

H.R. 3810 makes it unlawful for a person or other entity after enactment to hire, recruit or refer for a fee for employment any alien who is not legally in the United States. In conjunction with this prohibition, it is provided that an employment verification system be established to enable enforcement of the employment sanctions. Specifically, the legislation provides for the establish-

ment of a Social Security Account Number Validation Systerm which is to be established by the Attorney General, in cooperation with the Secretaries of Labor and Health and Human Services. This validation system is required to be operational within eighteen months after enactment.

Sec. 402 of the bill requires the President to provide the Committees of the Judiciary of the House and Senate every six months with an analysis of the adequacy of the employment verification system. In addition, he is to report on the impact sanctions are having on the employment, wages and working conditions of U.S. workers. He is also to report on the number of aliens entering the United States illegally, as well as the number of overstays who have violated the terms and conditions of their visas.

In processing this legislation, a number of concerns were raised that employer's sanctions would result in employment discrimination against both citizens and permanent resident aliens.

H.R. 3810 has extensive protection against unfair immigration-related employment practices. The President is required under this legislation to report on the impact of the employer sanctions provisions on discrimination against minority groups.

Considerable discussion was generated during the processing of H.R. 3810 to the effect the employer sanctions provisions were placing an undue burden on employers in requiring them to do the paperwork and keep records on employees in order to comply with the pertinent sections of this bill.

The President is requested to submit the last reports on the eighteenth, thirty-sixth and fifty-fourth months after the date of enactment.

These reports will provide the Congress with significant, empirical data in reviewing the impact of sanctions and to determine whether any future legislation on this subject is necessary.

Section 402 also requires the Civil Rights Commission to monitor and report to the Committees on the Judiciary of the House and Senate on the implementation and enforcement of the provisions of employers sanction and whether there has been any unlawful discrimination by race or nationality in the implementation of these provisions.

The U.S. Commission on Civil Rights, an agency established by Congress in 1957, is generally charged with investigating complaints of discrimination by reason of race, color, religion, sex, age, handicap or national origain in federal laws and policies. The Commission also serves as a clearing-house for information in respect to all types of discrimination.

Reports from the Commission are required to be submitted on the eighteenth month after enactment, as well as the thirty-sixth and fifty-fourth months.

Reports on H-2A Program

Section 403 of the bill requires the President to furnish a report not later than two years after the date of enactment and every two years thereafter on the implementation of the temporary agricultural worker (H-2A) program.

The report is to include (1) the number of workers employed in the program each year; (2) the compliance with the terms and con-

ditions of the program; (3) the impact on the labor needs, as well as wages and working conditions of the agricultural workers.

The reports are also to include any recommendations for modifying the program with regard to improving decisions regarding admissions, removing economic disincentives to hiring U.S. citizens or permanent residents, and improving cooperation among the various entities so as to end dependence on temporary foreign workers.

Reports on Legalization Program

Section 404 of the bill requires the President to transmit to the Congress two reports on the legalization program. The first due, no later than twelve months after the expiration of the application period, will describe the population legalized as to geographical origins and manner of entry in the U.S., as well as their demographic and general profile characteristics.

A further report is required within three years after the first report describing the impact of the program on state and local governments, especially on public health and medical needs, patterns of employment of legalized aliens and participation of legalized aliens in social service programs.

Report on Visa Waiver Pilot Program

Sec. 405 of the bill requires a report on the visa waiver pilot program established under section 217. Since this is a pilot program, its continuance, expansion or modification will depend on its effectiveness.

This section requires the Attorney General and the Secretary of State to jointly monitor this pilot program and report to Congress two years after the institution of the program. The report is to evaluate the program by assessing the impact on the control of alien visitors, on consular operations in the countries selected under the program and in other countries where consular personnel were reassigned as a result of this program and on the United States tourism industry.

The report will also contain recommendations with regard to extending the program period, as well as the designation of additional countries to be included within the program.

SECTION-BY-SECTION OF H.R. 3810, AS AMENDED

Sec. 1.—Short title, "Immigration Control and Legalization Amendments Act of 1986".

CONTROL OF UNLAWFUL EMPLOYMENT OF ALIENS AND UNFAIR IMMIGRATION-RELATED EMPLOYMENT PRACTICES

Sec. 101(a)—Creates a new Section 274A.

New Sec. 274A(a).—Makes it unlawful for any person or entity after enactment to hire or for a fee to recruit or refer, for employment in the United States an alien known to be unauthorized to be so employed. A person or entity that complies in good faith with the verification process under subsection (b), may establish an affirmative defense against such unalwful activity. Makes it unlawful for anyone to employ, or recruit or refer for a fee, any individ-

ual without first complying with the verification procedures outlined in subsection (b).

New Sec. 274A(b).—Sets forth the verification process, which utilizes existing identifiers. The verification process first requires that the employer, recruiter, or referrer, attest (under penalty of perjury) on a form approved by the Attorney General that he has examined either (A) the employee's U.S. passport (or foreign passport if it contains a work authorization), or (B) both (i) the employee's social security card or U.S. birth certificate and (ii) another identifier, such as an alien immigration ID card, a driver's license or other state identification card, or (for children under 16 and in States that do not issue identification documents) another reliable personal identification document designated by the Attorney General. Next, it requires the prospective employee to attest on this form that the employee is a citizen, permanent resident alien, or otherwise authorized to be employed. Lastly, the employer, recruiter, or referrer is required to retain the completed form, and make it available for inspection by the INS and the Department of Labor. Without regard to other laws, an employer, recruiter, or referrer may make copies of documentation presented for the purpose of complying with these requirements. The process must be completed by noon after the date of hiring and the verification form cannot be used for other purposes. Provides an alternative method of establishing employment eligibility by requiring the Attorney General to establish a method to validate the social security numbers of individuals applying to be hired, or recruited or referred for a fee for employment.

New Sec. 274A(c).—Specifies that nothing in this section shall be construed to authorize the creation or use of a national identification card.

New Sec. 274A(d).—Provides graduated penalties for employment, recruiting or referral of unauthorized aliens including citations, civil fines, and criminal penalties for pattern or practice violations. Authorizes the Attorney General to bring civil suits to enjoin persons engaging in a pattern or practice of employment, recruitment, or referral. Provides for a penalty range for violations of the verification requirement. Provides for a hearing before an administrative law judge for violations of the section.

New Sec. 274A(e).—Prohibits the use of employee posted indemnity bonds as a means of protecting against liability under this section and provides a civil penalty for violations of this subsection.

New Sec. 274A(f).—Provides that section 274A preempts State and local laws providing civil fines or criminal sanctions for employment, recruitment, or referral for employment of aliens not authorized to be employed.

New Sec. 274A(g).—Defines "unauthorized alien." Provides that although these provisions take effect immediately, no citation or penalty can be imposed for actions occurring during the first six months after enactment. During this period, the Attorney General shall provide public education regarding the requirements of new section 274A. Further provides that during the subsequent 12-month period, offenders shall be given a warning for the first offense. Further provides that employers involved in seasonal agricultural production shall not be liable for violations of this section

during the application period outlined in section 210A of this Act unless the employer engaged in unlawful recuriting of seasonal agricultural workers as defined in this subsection. Also, requires the Attorney General to isue regulations implementing new section 274A no later than seven months after enactment.

Sec. 101(b).—Creates a new Section 274B.

New Sec. 274B(a).—Makes it unlawful for any person or entity to discriminate (in hiring, recruiting, referring, or discharging) against an individual because of the individual's national origin or against a citizen or intending citizen because of the individual's citizenship status. This section does not cover (1) employers of three or fewer employees; (2) discrimination covered by Title VII, 1964 Civil Rights Act; (3) discrimination required by law or deemed by the Attorney General to be essential in order to do business with the government; (4) discrimination based on a bona fide English language occupational qualification. Defines an "intending citizen" as a lawful permanent resident alien, refugee, asylee, or legalized alien who has filed a declaration of intent to become a U.S. citizen but does not include an alien who has failed to seek naturalization within 6 months of becoming eligible to apply for naturalization or an alien who has not been naturalized within two years of the filing of the application for naturalization.

New Sec. 274B(b).—Authorizes a person alleging direct adverse effect by an unfair immigration-related employment practice to file a charge respecting such practice with the Special Counsel. Requires such charges to be in writing under oath or affirmation.

New Sec. 274B(c).—Requires the President to appoint, with the advice and consent of the Senate, a Special Counsel within the Justice Department who will be responsible for investigating and prosecuting charges brought under subsection (b).

New Sec. 274B(d).—Requires Special Counsel to investigate each charge and to determine within 120 days whether to bring a complaint before an administrative law judge. Authorizes the Special Counsel to initiate investigations of unfair immigration-related employment practices. Authorizes private action where the Special Counsel has not filed a complaint within 120 days based on a charge alleging knowing and intentional discriminatory activity or a pattern or practice of such activity. Provides that no complaints can be considered if the charges are not filed within 180 days of the unlawful activity.

New Sec. 274B(e).—Provides for a hearing on alleged violations of this subsection before an administrative law judge specially designated as having special training in employment discrimination cases.

New Sec. 274B(f).—Requires that testimony taken by the administrative law judge be reduced to writing. Outlines the authority of administrative law judges conducting hearings under this subsection.

New Sec. 274B(g).—Provides for a range of penalties for violations of this subsection, including civil penalties, injunctions, and awarding of back pay.

New Sec. 274B(h).—Authorizes the administrative law judge to award reasonable attorneys' fees to a prevailing party.

New Sec. 274B(i).—Provides that certain provisions of the National Labor Relations Act shall apply to procedures under this subsection.

Sec. 101(c).—Makes certain conforming amendments to the Migrant and Seasonal Agricultural Worker Protection Act.

Sec. 101(d).—Provides that nothing in this section shall be construed to restrict the authority of the Equal Employment Opportunity Commission under the Civil Rights Act of 1964.

Sec. 101(e).—Makes certain conforming amendments.

FRAUD AND MISUSE OF CERTAIN DOCUMENTS

Sec. 102.—Amends Section 1546 of title 18 of the United States Code to extend the criminal penalties for fraud and misuse of immigration-related documents to include border crossing cards, alien registration receipt cards, and other documents issued as evidence of lawful entry or employment in the United States. Increases the fine for violations of that section from $2,000 to $5,000. Provides a similar criminal penalty for the knowing use of fraudulent identification document or of another's identification document and false attestations in order to satisfy the employment verification process established under Section 101 of this Act.

IMPROVEMENTS OF ENFORCEMENT AND SERVICES

Sec. 111.—States that an increase in enforcement and service activities of the Immigration Service is an essential element of immigration reform established by this Act. Provides for supplemental authorizations of $422 million and $419 million for INS for fiscal years 1986 and 1987. Provides for supplemental authorizations of $12 million and $15 million for the Executive Office of Immigration Review for fiscal years 1986 and 1987. Requires the Attorney General to provide for improved immigration services and enhanced community outreach. Requires the Attorney General to report to Congress on the data processing requirements of the Service.

UNLAWFUL TRANSPORTATION OF ALIENS TO THE UNITED STATES

Sec. 112.—Amends Section 1324 of title of the United States Code to eliminate to so-called "Texas proviso," which prevents employment from being considered as harboring an alien. Establishes a criminal penalty for bringing an unauthorized alien to the United States, without regard to whether or not the entry was fraudulent, evasive, or surreptitious. The penalties include a fine of up to $10,000 or imprisonment up to five years, or both, for transporting or harboring an unauthorized alien, a fine of up to $5,000 or imprisonment up to one year for bringing an unauthorized alien to the United States, and, for subsequent offenses or in the case of commercial advantage, a fine of up to $10,000 or imprisonment up to five years, or both.

TREATMENT OF IMMIGRATION EMERGENCIES

Sec. 113.—Amends Section 1103 of title 8 of the United States Code by adding a provision requiring the Attorney General to develop a contingency plan in the event of an immigration emergency. Au-

thorizes an appropriation of $35 million to be used in accordance with the contingency plan.

VERIFICATION OF ALIEN STATUS UNDER CERTAIN PROGRAMS

Sec. 121.—Requires the States to verify the immigration status of aliens applying under certain public assistance programs. Provides an opportunity for the alien applicant to submit evidence as to immigration status without denial or termination of benefits until the evidence has been verified. Provides that the States shall not be liable for the consequences of such verification. Provides 100% reimbursement to the States for implementing the verification system Prohibits use of the verification system for certain enforcement purposes and prohibits discriminatory implementation of the verification system.

LEGALIZATION

Sec. 201.—Creates a new Section 245A.

New Sec. 245A(a).—Requires the Attorney General to grant temporary resident status to aliens who apply within the 18-month application period or within 30 days of the issuance of an order to show cause and who meet the eligibility requirements of this section. Requires that the alien show continuous residence in the United States in an unlawful status (including Cuban/Haitian entrant status) since before January 1, 1982 and general admissibility as an immigrant. In addition, the alien must establish that he or she has not been convicted of a felony or of three or more misdemeanors committed in the United States, has not assisted in the persecution of any person and has registered under the Military Selected Service Act if so required.

New Sec. 245A(b).—Requires the Attorney General to grant permanent resident status to temporary resident aliens who apply for adjustment during the 12-month application period beginning one year after the grant of temporary residence and who meet the eligibility requirements of this section. Requires that the temporary resident demonstrate minimal understanding of English and knowledge of U.S. history and government (or pursuit of such understanding and knowledge through a course of study) and general admissibility as an immigrant. Provides that the temporary resident status of aliens who do not apply for permanent residence shall be revoked. Authorizes brief and casual trips abroad and employment during temporary resident status.

New Sec. 245A(c).—Authorizes the filing of applications for adjustment to lawful status with the Attorney General or designated voluntary, state, local, community organizations and individuals. Provides for the confidential treatment of records and files relating to such application and establishes a penalty for permitting unlawful access to such information. Establishes a criminal penalty for fraudlent application.

New Sec. 245A(d).—Specifies that the numerical limitations on immigration shall not apply to this section and waives certain documentary grounds of exclusion. Permits the Attorney General to waive additional grounds of exclusion (except criminal, national security, and certain drug grounds) for humanitarian purposes, to

ensure family unity, or when it is otherwise in the national interest.

New Sec. 245A(e).—Authorizes a temporary stay of deportation and work authorization for aliens apprehended prior to the application period who can establish a non-frivolous case of eligiblity for adjustment under this section.

New Sec. 245A(f).—Provides for a single level of administrative appellate review of a denial of an application for adjustment of status. Permits judicial review of such denial only within the context of the review of an order of deportation.

New Sec. 245A(g).—Requires the Attorney General to issue such regulations as may be necessary to carry out this section, including a definition of the term "residing continuously."

New Sec. 245A(h).—Disqualifies a newly legalized alien from receipt of certain programs of federal public assistance for a period of five years from the date the alien received temporary resident status. Permits States and local governments to impose similar restrictions on financial and medical assistance furnished at the State and local level. Further provides that the disqualification will not apply to (1) Cuban/Haitian entrants, (2) aliens who are aged, blind, or disabled, and (3) certain medical and education programs.

New Sec. 245A(i).—Requires the Attorney General, in cooperation with qualified agencies and organziations, to widely disseminate information on the program of legalization under this section.

CUBAN-HAITIAN ADJUSTMENT

Sec. 202—Authorizes the Attorney General to grant permanent resident status to certain Cubans and Haitians who are currently in "Entrant" status or who established a record with the INS prior to January 1, 1982 and who have resided continuously in the United States since before January 1, 1982. Provides that an adjustment of status under this section shall not reduce the overall number of available immigrant visas.

UPDATING REGISTRY DATE

Sec. 203—Amends Section 1259 of title 8 of the United States Code by updating the date for legal registry from June 30, 1948, to January 1, 1976.

STATE LEGALIZATION ASSISTANCE

Sec. 204(a)—Authorizes appropriations for fiscal years 1987 through 1991 in such sums as may be necessary to carry out State legalization assistance under this section.

Sec. 204(b)—Requires, subject to available appropriations, the Secretary of Health and Human Services to provide the State 100 percent reimbursement for costs of State and local programs of public assistance. Limits State and local programs covered to those programs (1) providing cash, medical or other assistance designed to meet the basic subsistence or health needs of individuals or required for the public health, (2) generally available to all needy residents of the State or locality, and (3) funded by the State or local government.

Sec. 204(c)—Requires, subject to available appropriations, the Secretary of Education to assist to local educational agencies in meeting the costs of educating newly legalized aliens.

Sec. 204(d)—Requires the Secretaries of Health and Human Service and Education to consult with State and local governments in establishing regulations under this section.

TEMPORARY H-2A WORKERS

Sec. 301(a)—Creates a separate (H-2A) classification for nonimmigrant workers coming to the United States to perform agricultural labor or services (as defined by the Secretary of Labor) of a temporary or seasonal nature.

Sec. 301(b)—Provides for consultation by the Attorney General with the Department of Labor and Agriculture on bringing H-2A workers into the United States.

Sec. 301(c)(1)—Creates a new Section 216.

New Sec. 216(a)—Authorizes the admission of temporary H-2A workers only when the employers has petitioned the Secretary of Labor for a certification that (A) there are not sufficient workers who are able, willing, and qualified, and who will be available at the time and place needed, to perform the labor or services involved in the petition, and (B) the employment of the alien in the labor or services will not adversely affect the wages and working conditions of workers in the United States similarly employed. Allows the Secretary of Labor to charge a fee to issue the certification.

New Sec. 216(b).—Prohibits the Secretary of Labor from issuing a certification if the standards for the certification are not met or if (1) there is a strike or lockout, (2) the employer substantially violated in the previous 2 years a material term or condition of a previous certification, (3) worker's compensation insurance is not provided, and (4) the employer has not made positive recruitment efforts (in addition to circulation of the job offer and until the H-2A workers depart for work) within a multi-state region of traditional or expected labor supply.

New Sec. 216(c).—Provides special rules for treatment of H-2A applications. (1) The application need not be filed more than 60 days before the date of need. (2) The employer must be notified within 7 days of any reason for disapproval of the application (other than the failure to have sufficient domestic workers). (3) The Secretary of Labor must approve the application, at least 20 days before the date of need, if the conditions for approval are met and the employer does not actually have, or has not been provided with referrals of qualified individuals (based on the normal and accepted qualifications by non-H-2A employers for comparable occupations and crops). (4) For 3 years, the labor certifications require the employer (other than a small employer who is not associated with other H-2A employers) to provide employment to qualified U.S. workers who apply until the end of 50 percent of the H-2A worker's contract work period. Six months before the end of the 3-year period, the Secretary of Labor is required to consider the advisability of continuing this requirement and issue findings and regulations which (in the absence of Federal legislation) are published 3

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months before the end of the 3-year period. In meeting the requirement, associations can refer or transfer workers among their workers, but U.S. workers cannot be treated disparately. Employers are not liable for regulatory penalties for failure to continue employment of H-2A workers if these workers are displaced in meeting the requirement. If a person willfully and knowingly withholds domestic workers in order to force an employer to hire domestic workers under this requirement, the employer's obligation to hire U.S. workers are suspended. (5) Employers are required to furnish housing in accordance with regulations, and are permitted to provide or secure housing meeting appropriate Federal, State, or local standards and special provisions are made for the housing of employees engaged in the range production of livestock (such, as sheepherders) and for family housing.

New Sec. 216(d).—Provides special rules for the treatment of agricultural associations.

New Sec. 216(e).—Provides for an expedited procedure to review denials and revocations of certification and requires the Secretary of Labor (within 72 hours) to make new determinations if able, willing, and qualified workers are not actually available at the time and place required.

New Sec. 216(f).—Provides that an alien who violates a term or condition of admission as an H-2A worker is disqualified from further admission for 5 years.

New Sec. 216(g).—(1) Authorizes the appropriation of $10 million each year for recruiting domestic workers and monitoring employment conditions offered by H-2A employers. (2) Authorizes the Secretary of Labor to take necessary actions to assure employer compliance with the requirements of the H-2A program. (3) Authorizes appropriations for the Secretary of Labor to make certifications under the H-2A program and for purposes of admission of certain immigrants. (4) Authorizes appropriations for the Secretary of Agriculture to carry out duties under the H-2A program.

New Sec. 216(h).—Requires the Attorney General to provide documentation for H-2A workers for purposes of complying with the employers' sanctions provisions, and provides that the H-2A provisions preempt State and local laws regulating the admissibility of nonimmigrant workers.

Sec. 301(c)(2)—Makes permanent the exemption of temporary foreign agricultural workers from the FUTA tax provisions.

Sec. 301(d)—Makes the new H-2A program effective on the first day of the 7th month after enactment (the same date that the employer sanctions provisions first become effective).

Sec. 301(e)—Requires the Attorney General, in consultation with the Secretaries of Labor and Agriculture, to approve H-2A regulations and permits such regulations to be implemented on an interim or final basis.

Sec. 301(f)—Expresses the sense of Congress representing consultation with the governments of Mexico and of other appropriate countries concerning the H-2A program.

SPECIAL AGRICULTURAL WORKER ADJUSTMENT PROGRAM

Sec. 302(a)—Creates a new Section 210.

New Sec. 210(a)—Provides for adjustment to permanent resident status of aliens who (1) apply during an 18-month application period, (2) have performed at least 60 man-days of seasonal agricultural services during the 12-month period ending May 1, 1986, and (3) are admissible as immigrants (subject to certain exceptions).

New Sec. 210(b)—Provides for applications to be filed within the U.S. with the Attorney General or designated organizations or outside the U.S. through consular offices. Further provides that records prepared by the designated entities for this purpose are confidential and not available to the INS without an alien's consent. Makes it a felony to make false statements in such an application or in documentation used in making the application.

New Sec. 210(c)—Specifies that the numerical limitations on immigration shall not apply to this section and certain documentary grounds of exclusion. Permits waiver of other grounds of exclusion (except criminal, national security, and certain drug grounds) for humanitarian purposes, to ensure family unity, and or when it is otherwise in the national interest.

New Sec. 210(d)—Provides a stay of exclusion or deportation (and an authorization of employment) (1) through the first month of the application period for aliens who are apprehended before the beginning of the application period and who can establish a non-frivolous cases of eligibility for adjustment of status, and (2) for aliens who have filed a non-frivolous application until a determination is made on the application.

New Sec. 210(e)—Provides for a single level of administrative appellate review of applications. Restricts judicial review to the context of review of an order of exclusion or deportation.

New Sec. 210(f)—Treats aliens adjusted under the section as permanent residents for all purposes.

New Sec. 210(g)—Defines "seasonal agricultural services" as the performance of field work related to planting, cultural practices, cultivating, growing and harvesting of fruits and vegetables of every kind and other perishable commodities.

DETERMINATIONS OF AGRICULTURAL LABOR SHORTAGES AND ADMISSION OF ADDITIONAL SPECIAL AGRICULTURAL WORKERS

Sec. 303(a)—Creates a new Section 210A.

New Sec. 210A(a).—Requires the Secretaries of Labor and Agriculture, jointly before each fiscal year, to determine if additional special agricultural workers should be admitted because there is a shortage of agricultural laborers. This determination is based on the anticipated need for such workers, the supply of such workers and the number of man-days worked per worker. The need is based on the man-days of seasonal agricultural services performed in the previous year and is adjusted for crop losses resulting from labor shortages and for changes in need resulting from changes in agriculture (such as mechanization). The supply is based on the supply for the previous year adjusted for retirements and increased recruitment (taking into account both improvements in wages and working conditions and economic competitiveness of agriculture). The man-day per worker factor, for fiscal year 1990, is the average number of man-days per worker for special agriculture workers

(admitted under section 210) in the previous year or 80 man-days per worker if the data is not adequate to make a reasonable determination. For fiscal year 1991, the factor is the average number of man-days per worker for newly admitted special agricultural workers in the previous year. For succeeding fiscal years the factor is the average number of man-days per worker for special agricultural workers admitted in either of the two previous fiscal years. In the case of extraordinary, unusual and unforeseen circumstances, associations and groups of agricultural employers can request an increase in the shortage number based on significant changes in the need, availability, or man-days worked per worker over those originally assumed, and the Secretaries must publish notice of the request within 3 days and act on the request within 21 days. Such an increase may result in additional special agricultural workers being admitted (subject to the limitations of subsection (b)). Similarly, in the case of extraordinary, unusual, and unforeseen circumstances, groups of special agricultural workers can request a decrease in the shortage number based on significant changes in the need, availability or man-days worked per worker over those originally assumed. The Secretaries must publish notice of the request within 3 days and act on the request within 21 days. Such a decrease may result in a decrease in the number of man-days of seasonal agricultural services special agricultural workers are required to work in order to retain status or to obtain naturalization (see new section 210A(d)).

New Sec. 210A(b)—Limits the number of additional special agricultural workers who can be admitted in fiscal year 1990 to the difference between the "cap" (which is 95 percent of the number of original special agricultural workers who obtained permanent residence under section 210) and the number of those workers who were employed in seasonal agricultural services in fiscal year 1989. For each of fiscal years 1991–1994, the limitation is the difference between the cap (which is 90 percent of the "cap" for the previous fiscal year) and the number of special agricultural workers who were employed in seasonal agricultural services in the previous fiscal year. For subsequent fiscal years, the limitation is the difference between the cap (which is 95 percent of the "cap" for the previous fiscal year) and the number of special agricultural workers who were employed in seasonal agricultural services in the previous fiscal year. These limitations would be adjusted to reflect changes in the admission of H-2A workers from the previous year. Employers of special agricultural services are required to provide the Director of the Census and each alien with information on the number of man-days of seasonal agricultural service performed each year; this information (taking into account under-reporting and duplicate reporting) serves as the basis for certain determinations under the section.

New Sec. 210A(c)—Authorizes the Attorney General to admit additional aliens each year as permanent residents consistent with the shortage number previously determined under section 210(a), but in no case greater than the limitation established under subsection 210(b). Requires the Attorney General to establish a petitioning and preference system for the admission of aliens under this

section providing special consideration for aliens who have been continuously residing in the United States since May 1, 1986.

New Sec. 210A(d)—Provides that aliens admitted under this section are treated the same as otherwise permanent resident aliens, except that in order to avoid deportation they must work 60 man-days in seasonal agricultural services in each of their first two years and except that they cannot be naturalized until they have worked 60 man-days of seasonal agricultural services in each of five fiscal years.

New Sec. 210A(e)—Provides that agricultural employers may not discriminate in favor of special agricultural workers admitted under this section (and against other workers) in transportation arrangements or assistance and may not knowingly provide false or misleading information concerning certain terms, conditions, and existence of agricultural employment. Extends coverage of the Migrant Seasonal Agricultural Worker Protection Act to certain employers and extends certain penalties under that Act to violations of this section.

Sec. 303(b).—Provides for deportation of newly admitted special agricultural workers who fail to perform 60 man-days of seasonal agricultural services in each of the first two years after entry.

Sec. 303(c).—Treats special agricultural workers (admitted under section 210 and 210A of the Immigration and Nationality Act) as "eligible legalized aliens" for purposes of providing assistance to States and localities for certain costs associated with these workers during their first five years in the United States.

COMMISSION ON AGRICULTURAL WORKERS

Sec. 304.—Establishes a Commission on Agricultural Workers to review the special agricultural worker provisions, the impact of the legalization and employer sanctions on agricultural labor and other aspects of agricultural labor. Requires the commission to report to Congress within five years and to include recommendations for appropriate changes, if any, in the agricultural worker provisions.

LEGAL ASSISTANCE FOR CERTAIN AGRICULTURAL WORKERS

Sec. 305.—Makes temporary agricultural workers under the H-2A program eligible for legal assistance.

MISCELLANEOUS CHANGES IN THE IMMIGRATION LAW

Sec. 311.—Amends Section 1152 of title of the United States Code by increasing the colonial quota from 600 to 5,000, effective the first fiscal year after enactment.

Sec. 312(a).—Amends Section 1182 of title 8 of the United States Code by requiring foreign students, whether academic or vocational, to return to their country for at least two years after attending school in the United States. The Attorney General may waive this requirement in the case of students who are immediate relatives of U.S. citizens. Additionally, the Attorney General may waive the requirement in the case of academic students who have advanced degrees and a job offer from a university in the field of study, who have a degree in a natural science, mathematics, computer science

or engineering from a college or university in the United States and have been offered a research business or technical position by an employer in the field of study and who have advanced degree and exceptional ability. A waiver for change of nonimmigrant status may be obtained on behalf of a student changing to an H-3 trainee visa with a company for transfer overseas. Provides that all these changes apply only to aliens who obtain student status after enactment.

Sec. 312(b).—Prohibits student, other than those for whom a waiver is available from adjusting their status.

Sec. 312(c).—Precludes time spent in student status or H-3 status as counting for purpose of eligibility for suspension of deportation.

Sec. 312(d).—Prohibits adjustment of status in the U.S. for all students irrespective of data of admission to the U.S.

Sec. 313(a).—Amends section 101(a)(27) of the Immigration and Nationality Act by creating an additional "I" class of special immigrants. Three groups of aliens are eligible.

First, unmarried sons and daughters of employees and officers of international organization, second, a surviving spouse of an officer or employee of an international organization with certain residence requirements in each case, and third, a retired officer or employee of an international organization.

Sec. 313(b).—Amends section 101(a)(15) of the Immigration and Nationality Act by creating a new "N" nonimmigrant status for two groups of aliens: (1) parents of child.en who are given the "I" special immigrant status, while the children are minors, and (2) children of a parent or of a surviving spouse given "I" special immigrant status.

Sec. 314.—Creates a new Section 217.

New Sec. 217.—Authorizes the Attorney General and the Secretary of State jointly to establish a three-year pilot program for up to eight countries for the admission of foreign tourists without the need to obtain a visitor's visa. Restrictions apply to both the participating countries and the aliens admitted under the program.

Sec. 315(a).—Amends Section 1101 of title 8 of the United States Code by permitting natural, or "putative," fathers to petition for entry of their children without having to legitimate or adopt.

Sec. 315(b).—Amends Section 1254 of title 8 of the United States Code to provide that applicants may satisfy the continuous physical presence requirement for suspension of deportation not withstanding a brief and casual absence from the United States.

REPORTS TO CONGRESS

Sec. 401.—Requires the President to report to Congress on the general legal admissions under the Immigration and Nationality Act.

Sec. 402.—Requires the President to report to Congress on the impact of the implementation of employer sanctions under this Act.

Sec. 403.—Requires the President to report to Congress on the implementation of the H-2A temporary agricultural worker program under this Act.

Sec. 404.—Requires the President to report to Congress on the nature and impact of the legalization program under this Act.

Sec. 405.—Requires the Attorney General and the Secretary of State to monitor and report to Congress on the implementation of the visa waiver pilot program under this Act.

Sec. 406.—Requires the Attorney General to report to Congress on the resources required to improve the capabilities of the Immigration and Naturalization Service.

ASSISTANCE FOR INCARCERATION COSTS

Sec. 501.—Authorizes reimbursement to State and local jurisdictions for the costs of incarcerating illegal aliens and certain Cuban nationals.

ADMINISTRATION POSITION

The Administration supports the enactment of this legislation. The 1985 testimony presented by Attorney General Edwin Meese III during the Subcommittee's hearing is set forth below, as well as the formal report of the Department of Justice on the original bill.

DEPARTMENT OF JUSTICE

PREPARED STATEMENT OF EDWIN MEESE, III

Chairman Rodino, Chairman Mazzoli and Members of the Subcommittee, I welcome this, my first opportunity to appear before you and comment on the immigration reform legislation which you have so ably promoted over the past four years.

I begin my testimony by emphasizing that both President Reagan and I have been strongly committed to comprehensive immigration reform.

It may be useful to underscore that commitment by reviewing the history of the Administration's participation in the immigration reform effort. As you know, during the prior Administration, the Select Committees on Immigration and Refugee Policy was established to conduct a comprehensive study on the current state of immigration law and to make recommendations on those changes which appeared to command the necessary support for enactment. This blue ribbon commission, on which Chairman Rodino and Representative Fish so ably served, conducted a two-year study, including twelve regional hearings, and, in March 1981, issued its report. Commission Chairman, Notre Dame President Theodore Hesburg summarized those recommendations very effectively, when he stated that our purpose is to "close the back door—illegal immigration—while we open the front door—legal immigration—slightly more." Consistent with this theme, the essential recommendations were enactment of employer sanctions, a legalization program, and enhanced enforcement at the borders.

Upon receipt of the Select Commission's report, the Administrative immediately set up its own Cabinet-level task force to review the recommendations and make the appropriate legislative proposals. In October, 1981, the Administration's bill was submitted to Congress containing as its core elements employer sanctions and a legalization program. Extensive hearings were conducted by this

Subcommittee and that of Senator Simpson on the Administration's proposal and later on successor legislation, the popularity referred to Simpson/Mazzoli bill.

The remarkable record of Congressional consideration of immigration reform legislation is also worth reviewing. In August, 1982, the Senate passed the Simpson/Mazzoli legislation by the overwhelming, bi-partisan margin of 80-19. This House succeeded in bringing the legislation to the floor in the post election "lame duck" session but was unable to reach a final vote. In the 98th Congress the legislation was re-introduced in the House and Senate and the case for enactment restated through comprehensive hearings. In May, 1983, Senate passage was again achieved overwhelmingly, 76-18. The House also passed its version of the legislation, albeit by a less comfortable margin of 216-211, in June 1984. Unfortunately, the House-Senate conference committee was unable to reach final agreement, despite the yeoman efforts of you, Mr. Chairman, as well as Chairman Rodino and members of this Subcommittee.

Therefore, it cannot be argued that this is an issue which has received inadequate consideration by the Administration or the Congress or that all points of view have not been heard. The Administration continues to support passage of fair and balanced reform, and President Reagan has stated his commitment to that goal on numerous occasions during the past four and one-half years.

The problems the legislation seeks to address have not diminished and the status quo continues to be unacceptable. In fiscal year 1983, again, the Immigration and Naturalization Service (INS) apprehended more than one million illegal aliens, primarily along our southern border. That record breaking figure was exceeded in the most recent fiscal year and can be compared to annual apprehensions of 80,000 in the mid-sixties.

As my predecessor, William French Smith, put it succinctly, we must regain control of our borders. Indeed, regaining control of our borders is an essential goal of any true immigration reform. We cannot fairly speak of ourselves as a sovereign nation if we cannot responsibly decide who may cross our borders.

Accordingly, deterrents to illegal immigration must be part of any legislative package. Already with the able assistance of this committee the President sought and obtained for fiscal year 1985 substantial increases in immigration enforcement resources at the border. We will support an increase in resources to implement this bill and to have effective interior and border enforcement.

Yet regaining control of our borders is not the only principal that must govern responsible immigration policy. The immigrant has always been an American resource greater and more fruitful than any other or vast nation has bestowed. We must not deprive ourselves of the real bounty of legal immigration.

In short, Mr. Chairman, we can truly preserve the best of our heritage as a nation of immigrants only by a reasoned policy, executed by effective control of our borders, that makes equitable decisions concerning who should be admitted to permanent American residence and eventual American citizenship.

Employer sanctions

Concerning legislation, let me begin by saying that the Administration stands by the commitments we have made in the past to specific legislative reforms of the immigration laws. Much illegal immigration is caused by the easy entry of illegal immigrants into jobs that are very attractive when compared to employment opportunities in their homelands. Through a provision making it illegal knowingly to hire aliens who lack authorization to work in the United States, this problem can be addressed effectively. Employer sanctions are a credible and effective tool in dealing with such illegal immigration. As long as the American job market remains open to them, illegal aliens will continue illegal entry, smuggling, fraudulent visas, and the possibility of apprehension and deportation. We continue to support effective methods to require employers to share the responsibility to help solve this problem.

Legalization

The Administration has previously supported, and will continue to support, the legalization of some present undocumented or illegal aliens as part of comprehensive immigration reform. We must recognize the fact that some people, having entered this country illegally a substantial number of years ago, have set down roots here and become productive members of American society. We have to deal realistically with people whose longstanding presence here has demonstrated an abiding commitment to this country as productive and law-abiding residents. At the same time, we must guard against a legalization program that would attract additional illegal aliens to this country.

When the Administration originally proposed a legalization program in 1981, it was designed to be fair to U.S. citizens, legal residents and would-be immigrants who have waited patiently to come here legally. Certainly entry into the United States cannot be equitable if those willing to sneak in illegally under cover of night can enter with impunity, while others, following the procedure of our laws, are rewarded only with years of delay.

The provisions of H.R. 3080 would grant temporary resident status to illegal aliens residing here continuously since January 1, 1982, with adjustment to permanent resident status possible after one year. A separate provision would grant immediate permanent resident status of Cuban and Haitian nationals who arrived in the U.S. prior to January 1, 1982.

We believe these provisions are unfair to those persons who have respected the legal immigration system. They would serve to attract even more illegal migrants in the belief that they would somehow secure legal status now or in the future. We believe that at a maximum the legalization provisions should not cover illegal aliens who had not entered by January 1, 1980, with the exception of certain Cuban and Haitian nationals entering in 1981.

We endorse the approach of a shared federal-state-local responsibility for state and local costs associated with a legalization program. The Administration supports the capped entitlement program contained in S. 1200 which is designed to assist state and local governments with certain transitional social welfare expendi-

tures associated with the legalization program. We would have to oppose reimbursement to state and local governments of costs associated with imprisonment by state and local governments of illegal aliens; we believe this should remain a state and local responsibility in keeping with their jurisdiction over and enforcement of their own laws. We would also be unable to support reimbursement to state and local governments of the costs of educational benefits to former illegal aliens; this too should remain a state and local responsibility.

Temporary agricultural workers

It is acknowledged that some of the labor needs of the farm sector of our economy have been filled for many years by a sizable number of illegal aliens, who did not enter under temporary worker provisions. As we prohibit the employment of illegal aliens, it is important that we also provide a legal mechanism for agricultural employers to hire temporary foreign workers when they are unable to find American workers.

The Administration supports statutory authorization of a distinct H-2 temporary agricultural worker program. This program may be particularly important for agriculture during the transition period from dependence on illegal alien labor to reliance on a legal work force. Over the past several years, the Departments of Justice, Labor, and Agriculture have been reviewing both the existing H-2 program and proposed statutory modifications. We seek a balanced program that would ensure an adequate source of labor, but would not exploit employees or provide an added incentive to hire foreign rather than resident workers. The program should also protect the rights and welfare of all workers.

Members of this Subcommittee have sought diligently to work with your Senate colleagues to craft suitable language to describe such a program for temporary foreign agricultural workers. The Administration realizes that there will be continued discussions of the specifics in this sensitive area, and we look forward to working with the Subcommittee on this matter.

We also urge that an extra effort be made by representatives of growers an labor, in conjunction with the Administration and the Congress, to develop an acceptable and workable agricultural temporary worker program. This can be accomplished if all parties proceed in good faith and recognize the broader national needs for reform.

Conclusion

We appreciate the cooperation and responsiveness of this Subcommittee to the suggestions the Administration had made in previous years concerning the workability of certain provisions of the reform legislation. I commend this Subcommittee and your counterpart in the Senate for your thorough review of the immigration reform issues over the past four years. I will leave to INS Commissioner Alan Nelson specific comment on this bill.

The Administration remains strongly convinced that the national interest will be served by prompt enactment of immigration reform legislation. In the bi-partisan tradition that must guide the

consideration of this subject, we must provide a legislative reform that will improve the administration of our immigration laws.

U.S. DEPARTMENT OF JUSTICE,
OFFICE OF LEGISLATIVE AND INTERGOVERNMENTAL AFFAIRS,
Washington, DC, June 4, 1986.

Hon. PETER W. RODINO, Jr.,
Chairman, Committee on the Judiciary,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: This responds to your request for the Department of Justice's views on H.R. 3810, the "immigration control and Legalization Amendments Act of 1985." The Department supports enactment of this legislation if certain major and several minor revisions are made.

This Administration has coinsistently supported immigration reform, and the pressing need for legislation remains. We are pleased that you and Congressman Mazzoli are sponsoring H.R. 3810. We look forward to working with your Committee.

EMPLOYMENT OF UNAUTHORIZED ALIENS

Section 101

Section 101 of the bill amends present Section 274(A) of the Immigration and Nationality act (the Act) to provide penalties, also known as "sanctions", for employers who commit two types of offenses: (1) knowingly hiring an alien who is not authorized to work; and (2) failing to comply with the requirements of the Employment Verification System.

Employment verification

An employer must verify that each applicant for employment ("applicant") has established his or her authorization to work in the United States, including examining an applicant's identifying documentation and employment authorization. The applicant must also attest that he is a citizen or national of the United States, an alien lawfully admitted for permanent residence, or an alien authorized by the Attorney General to be employed. The employer must retain these records for a period of time specified by the Attorney General. Good-faith compliance with these requirements is an affirmative defense to a charge that the employer has knowingly employed an unauthorized alien.

Telephone verification

Proposed section 274A(b)(7) requires that the Attorney General, in cooperation with the secretaries of Labor and Health and Human Services, establish a method to validate the social security account numbers of individuals applying to be hired, recruited or referred for employment in the U.S.

Hearing process

Proposed section 274A(d)(4) provides for a hearing, before an administrative law judge, to determine whether a violation has occurred. An employer who requests a hearing may, within 60 days of an adverse decision, file a petition for review with the appropri-

ate court of appeals, of the administrative fine. If no hearing is requested, the fine assessed shall not be appealable. If the assessed penalty is not timely paid, the Attorney General must file a suit in a district court to enforce payment.

Delayed effective date

The penalty provisions have a delayed effective date. For the first six months after enactment, the Attorney General and the heads of certain Departments and agencies must diseminate information on these provisions, and no penalty may be imposed or proceeding conducted for a first violation. In the subsequent twelve months, the Attorney General is authorized to issue citations of violations. Again, no penalty may be imposed or proceeding conducted during this time.

Anti-discrimination provisions

Section 101 also creates a new section 274B, which contains extensive procedures for dealing with discrimination in hiring or discharging based on an individual's national origin or citizenship status. This coverage, also known as the frank Amendment, is extremely broad, encompassing citizens, "intebding citizens," aliens who are permanent residents, aliens temporarily admitted under the "amnesty" provisions, and aliens granted either refugee status or asylum, and who have completed a declaration of intention to become a citizen.

All employers are subject to this anti-discrimination provision, except that claims of national-origin discrimination are barred if: (1) the complainant is covered by section 703 of the Civil Rights act of 1964; or (2) United States citizenship is required by Federal law, regulation, or executive order, a Federal, State or local-government contract, or by order of the Attorney General; or (3) English-language skill is a bona fide occupational qualification reasonably necessary to the normal operation of the enterprise.

An employer found to violate these provisions may be ordered to maintain a record-keeping system for all applicants, to hire or rehire individuals directly and adversely affected by the employer's hiring or discharge practices, with or without back pay, to pay a civil penalty of $1,000 for each individual discriminated against and to pay attorneys fees. A penalty of $2,000 per violation may be assessed against an employer previously found to have engaged in discrimination.

Procedurally, any person alleging that "the person" has been "adversely affected directly" may complain to a "Special Counsel," created by the bill and appointed by the President with the advice and consent of the Senate. The Special Counsel must investigate all such complaints, to determine whether there is "reasonable cause" to believe that the charge is true. If so, then the Special Counsel may bring a complaint before an administrative law judge, who must be specially designated and trained by the Attorney General. The administrative law judge may then subpoena witnesses and evidence, and hold hearings. Subpoena enforcement rests with the federal district courts.

If the Special Counsel fails to file a complaint within one hundred and twenty days, the person making the charge may file a complaint directly before such judge.

An administrative order issued under this provision may be reviewed under Section 10 (d), (e), (f), (g), and (j) of the National Labor Relations Act. The standard of review would be the "substantial evidence" rule, consistent with that Act. The Special Counsel will exercise the powers of the National Labor Relations Board's General Counsel as specified by that Act.

Penalties

For a first offense in violation of sanctions provisions, an employer is subject to a $1,000—2,000 civil penalty for each unauthorized alien. For a subsequent offense, an employer is subject to a $2,000—5,000 fine for each unauthorized alien. An employer who engages in a pattern or practice of violations would be subject to a fine of $1,000, six-months imprisonment, or both. In addition, the Attorney General is authorized in a case to bring a federal civil action to seek relief such as injunctions or restraining orders.

Violating the paperwork requirements of the Employee Verification System subjects an employer to a $1,000 civil penalty for each individual for whom the employer failed to comply.

Comments

Barring the employment of unauthorized aliens is fundamental to curtailing illegal immigration. The Administration strongly supports employer sanctions, but recommends several revisions. We are opposed to the provisions of the Section mandating that employers retain records showing that they examined certain documents to determine whether an employee is eligible to work in the United States. The Department supports the approach taken by S. 1200 which makes the recordkeeping requirement optional, thereby decreasing the paperwork burdens imposed on businesses. We also support an exemption for employers of three or fewer persons as contained in your original bill, H.R. 3080. We would oppose any amendment to H.R. 3810 proposing to eliminate all recordkeeping requirements. We support the imposition of Civil Penalties, but the penalties should be fixed at specific amounts and not set within ranges. Fixed, specific fines would reduce potential litigation, and promote consistency in the assessment of fines. Moreover, fixed civil penalties will sufficiently deter the employment of unauthorized aliens; accordingly, we oppose criminal penalties, except possibly in "pattern and practice" situations. Also, the Administration opposes proposed Section 274A(a)(4) which would impose vicarious liability on firms for any verification or recordkeeping violations of their contractors or subcontractors. Since almost all of these firms would be covered by the provisions of the bill, a further expansion of liability is unnecessary.

The Administration opposes the requirement that the Attorney General establish a system to validate social security numbers presented by prospective employees. Such a system could be costly to implement and would not necessarily assure that a prospective employee presenting a valid social security number card is the person to whom the card was issued. Instead, we prefer the language con-

tained in Section 121 of S. 1200, as passed by the Senate. This section requires the President to monitor and, where necessary, implement changes in the system to verify employment eligibility so that it reliably verifies that an applicant is the person he claims to be and that such a person is eligible for work. Section 121 also contains authority to establish demonstration projects designed to verify employment eligibility. The Department of Justice does not intend to use any Social Security records for any demonstration projects.

The bill's anti-discrimination provisions are both unnecessary and overly inclusive. Existing national-origin civil rights laws are sufficient protection for all from unfair treatment.

H.R. 3810 would prohibit discrimination based on national origin and, in certain cases based on citizenship, by employers covered by the immigration reform bill, and would create a new apparatus within the Justice Department for enforcement. We oppose these provisions for several reasons.

The anti-discrimination provisions have been added to respond to fears that adoption of employer sanctions will cause discrimination against Hispanics or other "foreign-looking" people. We feel that these fears are unfounded, the bill requires employers to take simple steps to verify an applicant's legal status, and in our view it is highly unlikely that employers would discriminate rather than comply with the bill.

However, even if the fears of discrimination against Hispanics are well-founded, Title VII of the 1964 Civil Rights Act, 42 U.S.C. 2000e, already prohibits discrimination on the basis of national origin by employers with 15 or more employees, and permits both governmental and private enforcement actions. In addition, 42 U.S.C. 1981 provides a cause of action for someone discriminated against on the basis of national origin. In sum, discrimination on the basis of national origin is already prohibited by existing law and need not be duplicated by this bill as well.

The bill's provisions prohibiting discrimination on the basis of citizenship are extremely ill-advised. There is no record that discrimination on the basis of alienage or citizenship is a significant problem, or will be one if this legislation is enacted. In addition, although the bill appears to recognize that there are some federal or state laws which legitimately l some employment opportunities to citizens, there may be other matters, like treaties which permit foreign corporations doing business here to limit certain positions to their own nationals, which could conflict with this bill. The Congress would be making a significant error to enact this kind of prohibition without any record of need or careful consideration of its ramifications on other employment matters.

In addition, the creation of the office of the "Special Counsel" is unwise, unnecessary and unacceptably expensive. The EEOC already has jurisdiction over discrimination by employers based on national origin, and we see no reasoned basis for creation of a new bureaucracy with functions similar to those of one already in place. In addition, having two entities enforcing essentially the same prohibitions could well lead to the creation of different enforcement standards. Furthermore, no new administrative law judges are

needed since the present immigration judges, already familiar with the immigration laws, can handle the work.

A more reasonable approach that the Committee might want to consider is the approach the Senate took in S. 1200, which was to defer consideration of anti-discrimination provisions until the immigration reform legislation can be evaluated in practice, at which time an informed judgment can be made about the need for anti-discrimination provisions.

FRAUDULENT USE OF IMMIGRATION DOCUMENTS

Section 102

Section 102 of the bill amends 18 U.S.C. 1546 to bar the fraudulent use of certain documents to establish employment authorization. Fines for such activity are increased from $2,000 to $5,000. Likewise, the use of a false identification document or a false attestation is prohibited. The penalty for violating this section is a $5,000 fine, or two years imprisonment, or both.

Comments

Employer sanctions will likely increase the manufacture and use of immigration documents for fraudulent purposes. We support penalties of the type and magnitude contemplated by Section 102 to help deter this activity.

AUTHORIZATION OF APPROPRIATION FOR ENFORCEMENT AND SERVICE ACTIVITIES OF INS

Section 111

Section 111 provides for increased funding to increase INS enforcement and service activities, authorizing, for fiscal years 1986 and 1987 respectively, 422 million dollars and 419 million dollars over the regular authorization. These sums are to increase the border patrol and other INS enforcement activities and to ensure prompt and efficient adjudications of applications under the Act. The funding is also to be used to improve out-reach programs and in-service training of INS personnel. We support increased authorizations only of the magnitude proposed in the Senate bill and last year's conference bill. We believe these amounts will be sufficient for INS to carry out its increased activities. Current activities result in apprehending more than one million illegal aliens each year. Compared to the same time period last year, there has been a forty percent increase in the number of illegal aliens that have been apprehended. Any increased funding will enhance INS's enforcement activities and will also help to improve INS's service related activities.

Section 111(d) bars the INS from acquiring or installing data processing equipment. Section 111(d) should be dropped. We believe these provisions are unnecessary, and will further delay sorely needed data automation systems. The Office of Management and Budget has established strict guidelines concerning the acquisition of data processing equipment.

UNLAWFUL TRANSPORTATION OF ALIENS TO THE UNITED STATES

Section 112

Section 112 amends existing Section 274(a) of the Act to provide criminal penalties against anyone who unlawfully transports aliens to the United States. Criminal penalties can be imposed when: (1) a person knowingly brings or attempts to bring to the United States an alien at a place other than a port of entry or a place not designated by the INS Commissioner; (2) a person knowingly transports or moves, or attempts to transport or move, an illegal alien within the United States; (3) a person knowingly conceals, harbors, or shields from detection an alien; or (4) a person knowingly brings or attempts to bring an alien to the United States in any manner whatsoever. A person who violated any of the first three provisions can be fined up to $10,000, and imprisoned for up to five years. For the fourth provision, a fine of not more than $5,000, or imprisonment of not more than one year, or both can be imposed for each violation. A second offense, or an offense committed for commercial advantage or private financial gain, can result in a fine of not more than $10,000 or imprisonment for not more than five years, or both.

Comments

We support this section. It will reverse the judicial construction of Section 274 of the Act in *United States* v. *Anaya*, 509 F.Supp. 289, P. 297 (S.D. Fla. 1980), where the court held that Section 274 "was designed by Congress to prevent aiding and abetting the illegal entry of aliens into the United States in a *Fraudulent evasive* or *surreptitious* manner." (emphasis added)

We propose two changes, first, subsection (a)(1)(C), should be amended to include language relating to attempts to conceal, harbor or shield. This language appears in subsection 274(a)(3), and should be retained. *United States* v. *Cantu*, 557 F.2d 1173 (5th Cir.), reh. den. 561 F.2d 831, cert. den. 434 U.S. 1063.

Second, language incorporating the present subsection 274(a)(4), should be added. This provision subjects to criminal sanctions "any person . . . who willfully or knowingly encourages or induces or attempts to encourage or induce, either directly or indirectly the entry into the United States of any alien . . . not duly admitted by an immigration officer . . ." This provision has proven to be a useful tool in combatting alien smuggling. *See, United States* v. *Nunez*, 668 F.2d 10 (1st Cir. 1981); *United States* v. *Castillio-Felix*, 539 F.2d (9th Cir. 1976). Moreover, this is the only provision in Section 274 that has extra-territorial application. *See, Nunez, supra; United States* v. *Correa-Negron*, 462 F.2d 613 (9th Cir. 1972), and cases cited therein.

TREATMENT OF IMMIGRATION EMERGENCIES

Section 113

Section 113 amends the Act's existing Section 103 to direct the Attorney General to develop a contingency plan in the event of an immigration emergency. This section also establishes an immigration emergency fund of $35,000,000 for use in such emergency.

Before monies can be withdrawn from this fund the President must determine that an immigration emergency has occurred, and must so certify to the House and Senate Judiciary Committees.

Comments

This section, as drafted, does not provide the President with any new legal authority. We oppose the specific authorization provision. The Administration will request such funds as needed.

RESTRICTING WARRANTLESS ENTRY IN THE CASE OF OUTDOOR AGRICULTURAL OPERATIONS

Section 114

Section 114 amends existing Section 287 of the Act to restrict warrantless entries into open fields used for agricultural purposes. INS officers may not enter outdoor agricultural areas without a warrant or the consent of the owner or his agent, to interrogate persons as to their right to be in the United States. The only exception to these requirements is existing Section 287(a)(3), which permits access to private lands within 25 miles of the border.

Comments

The Administration strongly opposes this provision, and urges that it be entirely deleted. The Supreme Court in *Oliver* v. *United States*, 466 U.S. 170 (1984), held that the Government's entry onto an open field is not a search in the constitutional sense, since no privacy expectation can attach to such fields. Under this provision, INS will be the *only* law-enforcement agency precluded from entering "open fields," and this will curtail a major aspect of INS's enforcement operations.

It must be understood that agricultural searches of the kind involved here occur principally in areas where boundaries are obscured and ownership is often clouded by layers of sub-leases. Frequently, Border Patrol personnel must cross one tract of land in order to reach another. A warrant requirement would only delay and frustrate apprehension. The language of this provision would then force law enforcement personnel to obtain a series of warrants, even though the object of their quest is clearly visible, separated only by a narrow ditch or less obvious point of demarcation. Rarely are fields of the kind contemplated by this provision fenced, nor are they generally segregated from one another by treees or other obstructions which might give rise to a reasonable expectation of privacy. We believe, therefore, that a statutory warrant requirement which exceeds Constitutional demands set forth in the Fourth Amendment would encourage rather than deter illegal immigration. This provision would be especially undesirable if a temporary guestworker program is enacted for the perishable commodities industry.

VERIFICATION OF IMMIGRATION STATUS OF ALIENS APPLYING FOR BENEFITS UNDER CERTAIN PROGRAMS

Section 121

Section 121 establishes a verification requirement for persons applying for benefits under the AFDC, Medicaid, Unemployment Compensation and Food Stamp Programs. Each applicant or recipient must attest in writing to their U.S. citizenship, or provide proof of immigration registration if the person is not a citizen. The state must verify an alien's status through the INS so that the agency administering the program may determine the alien's eligibility for the benefits.

In addition, this section provides a definition of "Permanently Residing in the United States Under Color of Law" (PRUCOL) for purposes of the Social Security Act, the Unemployment Tax Act and Section 484 of the Higher Education Act of 1965. Basically, the definition limits "PRUCOL" to refugees, asylees, persons granted withholding of deportation, registrants under Section 249, aliens paroled into the United States, and persons granted deferred action.

Comments

We support the Committee's efforts to develop an alien verification program. The Administration is in the process of developing a cost-effective program to implement the alien verification concept, and will forward amending language to the Committee shortly.

LEGALIZATION STATUS

Section 201

Section 201 legalizes the status of certain aliens unlawfully in the United States. In general, this section applies to an alien who entered the United States prior to January 1, 1982, and who has continuously resided in the U.S. in any unlawful status since January 1, 1982. The alien must also establish continuous physical presence here since enactment. An alien shall not be considered to have failed to maintain continuous physical presence in the United States if the absence has been brief, casual, and innocent. In the case of a nonimmigrant, the alien must show that his period of authorized stay expired before January 1, 1982, through the passage of time or that the alien's unlawful status was known to the Government on that date.

Although eligibility is specifically confined to aliens who have entered the United States, an exception is made for "Cuban/Haitian Entrants (Status Pending)" described in paragraph (1), or (2)(a), of Section 501(e) of Public Law 96-422. Persons in this category are deemed to have entered the United States for purposes of this section.

The applicant must also show that he is admissible as an immigrant with certain grounds of inadmissibility specifically waived, and others which may be waived in the discretion of the Attorney General. The exclusion from eligibility in the case of an individual likely to become a public charge may be disregarded in the case of an alien with a U.S. work history that evidences self-support with-

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out reliance on public cash assistance. The applicant is not admissible if he has been convicted of any felony, or has commited three or more misdemeanors in the United States.

An alien who meets these requirements shall be granted temporary resident status. Twelve months after this grant, the alien must apply for permanent resident status, and must do so within the next twelve months. If he does not, then his temporary resident status automatically expires on the twenty-fifth month following the date it was granted.

A temporary resident may seek to adjust his status to permanent resident if he can establish continuing eligibility for temporary resident status, plus several additional criteria. He must show that he has not meaningfully interrupted his continuous physical presence in the United States, and that he has attained a minimal understanding of ordinary English, as well as a knowledge or understanding of the history and government of the United States, or he is satisfactorily pursuing a course of study in these fields.

An alien apprehended in the United States prior to the start of the application period who can establish a "nonfrivolous case of eligibility" for temporary residence may not be deported, and is authorized to work at least through the first thirty days of the application period. An alien apprehended during the application period is also not deportable, if he or she makes a nonfrivolous application, until after a final determination is made on the application. He is also authorized to work.

Administrative and judicial review of determination

An applicant denied temporary or permanent resident status is entitled to appeal to an administrative authority established by the Attorney General. This review is to be based "solely upon the administrative record" of the application, although updating the record is permitted.

Judicial review of denial of an application for temporary or permanent residence is to be based "solely upon the administrative record" as part of an order of deportation. The court may review the record for abuse of discretion, or to determine if the findings are directly contrary to clear and convincing facts contained in the record as a whole.

Disqualification from certain public-welfare benefits

An alien granted temporary resident status is generally ineligible for certain public welfare assistance programs for five years beginning with obtaining that status. The Attorney General will identify the programs covered in consultation with other federal agencies and departments. In addition, State and municipal governments may refuse financial or medical assistance to aliens in this category. An exception is made for "Cuban/Haitian Entrants (Status pending)." Other exceptions presumably would permit aged, blind and disabled persons to participate in the supplemental security income, food stamp, and Medicaid programs, and would permit aliens who are under 18 years of age, pregnant, or in need of emergency services to participate in the Medicaid program.

For purposes of this section, "financial assistance" is defined not to include certain programs such as the National School Lunch Act, the Child Nutrition Act of 1966, the Headstart-Follow Through Act and others.

Comments

The Administration supports the concept contained in Section 201 but certain revisions are necessary to establish a workable, cost-effective program. We believe that a January, 1980, cut-off date is preferable to January, 1982. A 1980 date is also consistent with the recommendations of the Select Commission on Immigration and Refuge Policy, which tendered its report to the President. The Commission felt that such a date would exclude those drawn here by the hope of legalization. In its report, the Commission expressed the view that it:

> [did] not want to reward undocumented/illegal aliens who may have come to the United States, in part at least, because of . . . discussions about legalization, nor [did] it want to stimulate further illegal migration by recommending a date that [would] follow the release of its report.

It is also significant that a 1982 date would result in a substantial increase in the cost of the legalization program.

The provisions for both administrative and judicial review of applications for adjustment of status are unnecessary and likely to increase dramatically the costs of administering this provision, particularly since this section makes no distinction between review of temporary and permanent resident applications. The Department considers a single administrative review sufficient to safeguard the interests of an applicant.

The provisions relating to administrative and judicial review are also ambiguous. Administrative review is to be limited to the record existing at the time an application is denied, but the record on review may be updated. Judicial review is to be based solely upon the administrative appellate authority. Its findings and determinations are to be conclusive, unless the court finds an abuse of discretion or that the "findings are directly contrary to clear and convincing facts." These standards of review are not the same, and will only invite controversy and litigation.

The Administration also believes that the provisions relating to "brief, casual and innocent" absences from the United States will be extremely difficult to administer. Application of this standard is not supported by *Rosenberg* v. *Fleuti*, 374 U.S. 449 (1963). *Fleuti* applied only to lawful permanent resident aliens, not aliens illegally in the United States. We suggest that absences of a specific period of time, i.e., no more than fifteen days in the aggregate, from the date chosen for legalization, constitute the qualifying limit. The bill should also specifically state that absences related to violations of the immigration laws would automatically interrupt the physical presence requirement, regardless of the period of absence.

The Department finds particularly objectionable Section 201(b)(5)(c), which provides for five years imprisonment and a $5,000 fine for using, publishing or permitting information from legalization files to be used in an unauthorized manner. No intent to

disclose is required, and the penalty is greatly excessive. By contrast, Section 102 provides only two years imprisonment for the fraudulent use of documents. The Department strongly urges that Section 201(b)(5)(c) be deleted. Information may be safeguarded by disciplinary proceedings against government employees who engage in unauthorized disclosure.

The bill provides that in order to participate in the legalization program, an alien must have resided continuously in the U.S. in an "unlawful status" since a time prior to January 1, 1982. The term "unlawful status" is not defined. We believe that the bill needs to be clarified so as not to bar participation in the legalization program by aliens who lack a currently valid immigration status, but who receive SSI and AFDC benefits by virtue of a determinaton that they are "permanently residing in the U.S. under color of law" (PRUCOL). We believe that SSI/AFDC recipients who are PRUCOL should be allowed to participate in the legalization program.

The bill's provision for waiving the public charge exclusion in the case of aliens with a demonstrated U.S. work history is too limited. Some aliens who are "unlawfully in the U.S." for purposes of this legislation are nevertheless also PRUCOL for purposes of entitlement under current provisions of certain Federal public assistance programs. We recommend that the bill be modified to provide that an alien, who is a public assistance program beneficiary by virture of being determined to be PRUCOL, who applies for legalization, not be barred from the legalization program because of his previous participation in public assistance programs. We note that aliens who are aged, blind, or disabled who receive benefits under the supplemental security income program are especially unlikely to have a work history that would trigger the exemption from the public charge grounds for exclusion from admission.

The Department has several problems with the bill's disqualifications from certain public-welfare benefits. The Department of Health and Human Services testified on September 11, 1985, that it estimated that the exceptions to the general bar on participation in Federal public assistance programs would cost at least $4.7 billion for the period FY 1987 through FY 1991. Such costs are unacceptable at a time when we are facing large budget deficits. In this connection, we note that although the legislation contains a purported general bar on Medicaid participation, the excepted categories (i.e., the aged, blind and disabled, children under 18, pregnant women, and persons in need of emergency services) would be expected to apply for 99% of the Medicaid services that the entire unlawful alien population would use if there were no general bar. Additionally, certain programs for which newly legalized aliens should logically be eligible are absent from the list of education programs. This provision could prove to be an administrative nightmare for the Department of Education, the States, and local educational agencies if an attempt was made to exclude the newly legalized aliens from certain programs while including them in others.

We are concerned that there is no provision in H.R. 3810 relating to assistance furnished on a basis other than financial need. Certain merit-based education programs, such as the tuition portion of the National Graduate Fellows Program (20 U.S.C. 1134(h) *et seq.*)

and certain international education programs, may be affected. H.R. 3810 may imply that newly legalized aliens are eligible for these merit-based programs despite their temporary resident status, which would normally be insufficient for eligibility in accordance with the Department of Education regulations. We suport addition of language stating that nothing in the bill is designed to affect eligibility for non-need-based programs.

Finally, including certain TRIO (Special Programs for Students from Disadvantaged Backgrounds.) Programs on the list of prescribed education programs presents substantial problems for institutions of higher education and for student aid. In certain programs, the institution must give assurances that the student will receive significant financial assistance to meet the students needs; if a participant was a newly legalized alien and thus under H.R. 3810 ineligible for Federal student aid, a participating institution could be faced with a substantial and unexpected demand on its resources. Under such circumstances, it is conceivable that some schools would withdraw from the program, resulting in the denial of program benefits for other disadvantaged students.

In view of these problems, the Department objects to proposed Section 245A(h)(3) of the Act as drafted. It should either be clarified to contain merely an illustrative list of programs that newly legalized aliens would be eligible for (with the TRIO programs discussed above deleted), or that provision should be deleted in its entirety.

We are also concerned about the proposed requirement that the Attorney General must approve courses of study in English and American history and government in order to satisfy the bill's requirements. This course-approving function could potentially require a very substantial commitment of the Attorney General's time and resources. Additionally, this provision might create strong pressure for federal funding for courses to satisfy this requirement. A provision stating that no new federal funds are to be authorized or expended would provide a simple remedy to this issue.

In addition, we note that there are certain technical changes which may be necessary such as waivers of standard government personnel, procurement, contracting, real and personal property, printing, and forms-clearance requirements.

CUBAN-HAITIAN ADJUSTMENT OF STATUS

Section 202

Section 202 provides for the adjustment of status to permanent resident of all Cuban or Haitian nationals who fall within two categories. The first consists of those persons who have been designated "Cuban/Haitian Entrants (Status Pending)." The second consists of those Cuban and Haitian nationals who arrived in the United States before January 1, 1982, and with respect to whom INS established a record as of that date. A Cuban or Haitian national admitted as a nonimmigrant who did not apply for asylum before that same date is not eligible for adjustment of status.

The applicant must also be otherwise eligible for admission as an immigrant, except for the documentary requirements of section 212(a) of the act, and not come within section 243(h)(2) of that Act.

The alien must be physically present in the United States on the date the application is filed, and also have continuously resided in the United States since January 1, 1982. An applicant has two years from the date of enactment to apply. If adjustment of status is granted, a record of permanent residence as of January 1, 1982 will be established. A grant of adjustment of status under this section will not count against the immigrant visa allocation for either Cuba or Haiti.

Comments

Separate procedures for adjustment of status of "Cuban/Haitian Entrants (Status Pending)" are unnecessary. Section 201 specifically confers eligibility for legalization upon the same persons covered by this provision. There is no substantial reason to accord these Cuban and Haitian nationals preferential treatment. All aliens unlawfully in the United States should meet the same eligibility requirements, regardless of the country of origin, a principal adopted in the 1965 amendments to the Act. The Cuban Adjustment Act of 1966 should be repealed.

STATE LEGALIZATION ASSISTANCE

Section 204

Section 204 directs the Secretary of Health and Human Services to reimburse States for all of the costs of public assistance provided to any legalized alien, such as those which provide cash, medical or other assitance designed to meet basic subsistence or health needs, or public health interests.

Comments

The requirement for 100-percent reimbursement should be dropped. While there may be costs associated with the legalization program which may fall on the States, we believe that the newly legalized population will be an asset to the States, consisting of productive, hard-working people. Similarly, education has always been a State responsibility, and no States currently bar the education of illegal alien children. In addition, by placing no limit on the amount of appropriations available for State legalization impact-assistance grants and by imposing no requirement for a State share in costs, the bill likewise provides no incentive to States to control their costs. While we recognize that immigration matters are a Federal responsibility, the proposed funding scheme fails to take into account that the legalized population will be contributing taxes to States and localities. For these reasons, we believe it inappropriate to absolve States and localities of all financial responsibility for the newly legalized population. As we have found in the context of refugee resettlement, 100-percent reimbursement serves as a disincentive for States to evaluate their public assistance programs. Therefore, the Administration is strongly opposed to the 100 percent reimbursement requirement for public assistance, but does support a capped authorization of $1.8 billion in total, as proposed in the Senate bill as reported by the Judiciary Committee. We would also suport distributing the funds to the States over a four year period in amounts not exceeding $300 million per year for the

first two years and $600 million in each of the next two years—to help States meet the costs of such assistance.

H–2A WORKERS

Section 301

Section 301 establishes a nonimmigrant classification for temporary agricultural workers (H–2A), and adopts a new program for admitting them. A labor certification shall not be issued under certain circumstances, *e.g.*, a strike or lockout during a labor dispute; employer violation of a previous labor certification; or employer failure to provide workers' compensation, if not otherwise covered by State law.

Rules for consideration of applications

Applications must be filed with the Secretary of Labor not more than sixty days before an employer requires the services of a temporary worker. The employer must be notified within seven days of the filing if the application is deficient. The certification must be made not later than twenty days before the employer requires the services of a temporary worker. The certification remains effective only if the employer continues to accept for employment, qualified individuals who apply or are referred to him until the date when the H–2A workers depart to work for the employer. The employer would be required to offer housing. An H–2A petition may also be filed by an agricultural association. When a petition is denied because there are sufficient workers who are able, willing and qualified, or because employment of the temporary worker will adversely affect the wages and working conditions of similarly employed U.S. workers, there is an expedited administrative appeal. In administrative appeal circumstances, the Secretary of Labor must make a new determination within 72 hours of a request. The employer has the burden of proof to establish that an eligible U.S. worker is not able, willing, or qualified to perform the requested labor.

The temporary worker cannot be admitted for longer than that determined by regulation. He may also not be admitted if in the previous five-year period he had violated the terms of his admission.

Funding

Section 301 also authorizes the appropriation, for fiscal year 1987 and after, of 10 million dollars, to recruit domestic workers for temporary services, and to monitor the H–2A program. The Secretary of Labor is authorized to impose appropriate penalties and seek appropriate relief to ensure an employer's compliance with the terms of the employment. Such sums of monies are authorized to be appropriated to the Secretary as may be appropriate to make H–2A determinations and certifications. The Secretary may require payment of a fee to recover reasonable costs of processing certifications.

Advisory Commission

Subsection 301(f) expresses the sense of Congress that the President should establish an advisory commission to consult with governments and advise the Attorney General regarding the operations of the H-2A program.

Comments

The H-2 program reforms contained in Section 301 of H.R. 3810 fall considerably short of the Administration's goal of creating a viable and improved H-2 program. While not perfect, however, the H-2 provisions of S. 1200 in general are preferable to those contained in H.R. 3810. We believe these provisions, in the context of S. 1200, provide a viable means for improving the the H-2 program in the context of overall immigration reform.

The Administration has carefully drafted the following Statement of Principles to meet divergent and complex needs.

STATEMENT OF PRINCIPLES—ADMINISTRATION COMPROMISE AGRICULTURAL WORKER PROPOSAL

Seasonal Worker Program

The Administration supports the creation of a seasonal worker program to address the particular labor needs of growers of perishable commodities.

Any workers admitted under such a program would be admitted only for the purpose of doing field harvest labor for truly perishable commodities.

Migrant and Seasonal Worker Protection Act shall apply to any field harvest laborers admitted under such a program with regard to job disclosure, working conditions, housing, transportation and wage determination.

Two years after the effective date of any such program, the Agricultural Worker Commission will set a cap on the total number of workers to be admitted in the subsequent year; on an annual basis thereafter, the statute will provide that the Commission lower the cap annually by not less than 5% nor more than 20%; the Commission would have the discretion to determine the precise percentage decline within that range and could, for one year only, suspend the decline altogether if exceptional circumstances warranted such suspension.

In setting the cap and subsequent rates of decline, the Commission will consider labor market conditions and the abundance of crops.

State Department concerns with respect to the operation of such a program in foreign countries wil be appropriately addressed.

H-2 Program

DOL, acting independently and in response to recommendations from the Agricultural Worker's Commission, will take meaningful steps to improve the H-2 program as a workable and acceptable means of meeting shortages in the domestic agricultural labor market.

The Administration supports S. 1200's temporary worker reforms except that the Secretary of Labor will issue the regulations governing labor certification under this program after meaningful consultation with the Departments of Justice and Agriculture. Both the regulatory authority provision and the consultation requirement will be statutory.

Search Warrant Provision

The Administration strongly restates its opposition to the imposition of an open field search warrant requirement over immigration law enforcement officers.

Additionally, the Administration opposes Section 301(f). The United States has already established lines of communication with the government of Mexico and other sending countries on immigration matters, with particular regard for the protection of foreign worker's rights in our country. We believe that the establishment of an additional channel to these foreign governments would be inappropriate, and would conflict with the Executive Branch's ongoing responsibilities for international consultations and regulatory control of Federal programs.

CHANGE IN COLONIAL QUOTA

Section 311

The quota for immigrants born in a colony, as set forth in Section 202(c) of the Act, is increased from 600 to 3,000, starting with fiscal years beginning after enactment.

Comments

The Department supports increasing the colonial quota, but recommends that it be raised to 5,000 to meet projected demand particularly from the nations of Hong Kong, in consideration of this Colony's transfer of sovereignty in 1997 from the United Kingdom to the People's Republic of China.

STUDENTS

Section 312

Section 312 requires a two-year foreign residence for non-immigrants admitted as students. The Attorney General may waive under certain circumstances, the foreign-residency requirement for alien students, if he determines that the waiver is in the public interest.

If the alien applies for a nonimmigrant visa he must meet additional requirements. Moreover, the alien must annually furnish an affidavit attesting that he is in good standing with the training program, and will return to this country upon completion of the program. Section 312 would also make certain other amendments relating to adjustment of status and deportation.

Comments

We oppose Section 312. The two-year foreign residence requirement will be burdensome on bona fide students and U.S. employers. It will also create a strong impetus for students to enter into

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fraudulent marriages to circumvent the foreign-residence requirement. The Administration must express its concern in dropping the distinction between private students and sponsored exchange visitors as this bill provides. Under the proposed change, the two-year residency requirements to which certain visitors are subject will also apply to most private students. Even when originally applied across the board to the much more limited number of exchange visitors, the two-year foreign residency requirement created hardship for individuals and for the United States government and private organizations, schools and hospitals. The move in 1970 to a selective application of the two-year requirement reflected Congressional understanding of concerns which are peculiar to this Country's program of educational and cultural exchange.

In addition, H.R. 3810 does not provide a student with the benefit of all four bases for a waiver as it does for most of the exchange visitors. Consequently, including them in such a requirement will generate an administrative burden for our consular personnel abroad. We believe that there will be a considerable increase in the number of complaints about the hardships generated and the arbitrariness of the requirement.

G–IV SPECIAL IMMIGRANTS

Section 313

Section 313 would add a special immigrant category to benefit officers or employees of international organizations and their immediate family members. An individual could qualify for special immigrant status if he resided in the United States for only seven out of twenty-one years, as long as he had resided for some unspecified time in the United States within the last seven years. In contrast, an alien who has been employed by the United States abroad must have "performed faithful service for a total of fifteen years, or more," to qualify as a special immigrant.

Comments

The Department has no objection to Section 313.

Section 314

Section 314 provides authority to establish a pilot visa-waiver program for certain nonimmigrant visitors. The waiver would apply to visitors from countries providing a reciprocal waiver for U.S. citizens.

Comments

The Administration supports the concept of a visa-waiver program, but opposes the eight-country pilot program contained in H.R. 3810. We recommend a permanent risk waiver program for countries which can qualify under the criteria established in this legislation. It must include certain safeguards to track the entry into and departure from the United states of foreign nationals who could qualify under the program.

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MISCELLANEOUS PROVISIONS

Section 315

Section 315(a) gives equal treatment to fathers to allow immigration benefits for an illegitimate child. This amendment overrules *Fiallo* v. BELL, 430 U.S. 787 (1977), which held that an illegitimate child can claim immigration benefits only through its mother. We support 315(a) because it provides equal treatment without regard to a parent's sex.

Section 315(b) permits an alien to maintain a continuous physical presence if his absence from the United States was brief, casual, and innocent. This amendment would overrule *INS* v. *Phinpathya*, 104 S.Ct. 584 (1984), which held that any absence, however, brief, breaks the continuity of physical presence.

We oppose this amendment because its vagueness invites judicial lawmaking and encourages litigation. We recommend either deleting this provision or amending it to preclude the establishment of continuous physical presence if the alien's departure is 15 days or longer, or where the alien has engaged in activities contrary to the immigration laws.

TRIENNIAL REPORTS CONCERNING IMMIGRATION

Section 401

Section 401 requires that the President submit to the House and Senate Judiciary Committees a triennial report on the Act. The comprehensive report must include the number of aliens admitted in various immigrant and nonimmigrant categories, and their impact on the economy, labor and housing markets, educational quality systems, social services, and population growth rate of the United States. The President must also provide a reasonable estimate of the number of aliens who entered the United States illegally, or who became deportable during the three-year period. The report must also project for the following five-year period the information contained in the report. The President must also include in the report any appropriate recommendation bearing on the admission and entry of aliens in the United States.

REPORTS ON UNAUTHORIZED EMPLOYMENT AND DISCRIMINATION

Section 402

Section 402 requires the President to report on the implementation of the employer-sanctions provisions to the House and Senate Judiciary Committees every six months beginning the twelfth month after enactment. This report must contain an analysis of the employment verification system. The President must also report on the impact of the employer-sanctions provisions on the employment, wages and working conditions of United States workers, illegal immigration, and violation of status by nonimmigrant visa holders.

A separate report on the effect of the employer-sanctions provision on discrimination against minority group citizens and permanent residents and the paperwork and record-keeping burden of

employers must be submitted. This report is due 18, 36 and 54 months following enactment.

The Civil Rights Commission must submit its own report, due 18 months after enactment, on the implementation and enforcement of this section. The Commission must additionally investigate allegations that there has been unlawful discrimination based on race or nationality against citizens or aliens authorized to work.

REPORTS ON H-2A PROGRAM AND ON AGRICULTURAL LABOR TRANSITION PROGRAM

Section 403

Section 403 requires the President to transmit to the House and Senate Judiciary Committees a report not later than two years after the enactment of this legislation, and every two years thereafter on the H-2A program, including the number of foreign workers employed under each program, compliance of employers with the terms and conditions of the program, and impact of the programs on the labor needs of the United States agricultural employers. The report must also include recommendations for modifications of the programs.

REPORT ON THE LEGALIZATION PROGRAM

Section 404

Section 404 requries the President to transmit to Congress two reports. The first report, required within 12 months after the end of the application period for temporary residence, is to include a significant amount of data relating to the legalized population, describing the geographical origins and manner of entry of these aliens, their demographic characteristics and a general profile of the population. The second report, due three years after the first report, is to contain information describing the impact of the program on State and local governments, public health and medical needs, patterns of employment and participation of legalized aliens in social service programs.

Comments

The Department generally opposes the proliferation of statutorily mandated reporting requirements, preferring instead to provide the Congress with information requested on an as needed basis.

STATE AND LOCAL ASSISTANCE FOR INCARCERATION COSTS OF ILLEGAL ALIENS AND CERTAIN CUBAN NATIONALS

Section 501

Section 501 contains an open ended allocation of such sums as are necessary for the Attorney General to reimburse State and local jurisdictions for incarceration and related costs of illegal aliens and others.

Comments

The Administration strongly opposes reimbursement of state and local costs of imprisoning illegal aliens. However, we will work

with state and local officials to assure the prompt removal of such aliens upon completion of their sentences.

Conclusion

Finally, in response to requests from members of your Committee, we have submitted amendments to H.R. 3080, and we may be submitting additional amendments to H.R. 3810. These amendments are prepared expressly at the request of members of Congress as a drafting service and they do not necessarily represent the position of this Department or this Administration.

The cost of this legislation is of concern to both the Congress and the Administration. At a time when we are all striving to reduce costs in order to comply with the deficit levels established by Gramm-Rudman-Hollings, it behooves us to assess carefully the costs of programs that will result from the enactment of legislation. As specified in this report, the Administration is striving to address such costs by specifying appropriation authorization levels for federal activities and eliminating open-ended entitlements.

The Administration would like to reiterate its strong support for immigration reform. We know that we share a mutual interest in enacting legislation that will be most beneficial to the people of the United States.

The Office of Management and Budget has advised that there is no objection to the submission of this report from the standpoint of the Administration's program.

Sincerely,

JOHN R. BOLTON,
Assistant Attorney General.

OVERSIGHT STATEMENT

Pursuant to clause 2(1)(3)(A) of rule XI of the Rules of the House of Representatives, the Committee states that it has exercised close oversight with regard to the administration of the Immigration and Nationality Act by both the Departments of State and Justice. In fact, during the 98th Congress the Subcommittee on Immigration, Refugees, and International Law held 4 days of hearings to review the implementation of the Immigration and Nationality Act by these departments. This Committee will continue that close oversight in the 99th Congress and will carefully monitor the implementation of H.R. 3810, as amended. Additionally, in its role as authorizing committee for appropriations for the Immigration and Naturalization Service the Committee will review the administration of this legislation. The bill does require reports to the Congress on various sections of the bill, and the Committee will closely review those reports.

Clause 2(1)(3)(A) of rule XI of the Rules of the House of Representatives is inapplicable since no oversight findings and recommendations have been received from the Committee on Government Operations.

Inflationary Impact Statement

Pursuant to clause 2(1)(4) of rule XI of the Rules of the House of Representatives, the Committee estimates that this bill will not have a significant inflationary effect on prices and costs in the operation of the national economy.

Estimate of Cost

The Committee whishes to emphasize that the long term enconomic benefits of this legislation will be substantial. By reducing illegal immigration through employer sanctions, it is expected that INS' enforcement costs will, in time, be reduced, a positive impact on our balance of payments will be achieved and increased tax revenues will be obtained as the result of the legislation program. Most important, job opportunities will be made available for millions of unemployed Americans and there will be a concomitant decrease in expenditures (unemployment, public assistance, etc.) made in behalf of such workers.

Pursuant to clause 7, rule XIII of the Rules of the House of Representatives, the Committee states that it generally concurs with the cost estimates submitted by the Congressional Budget Office and set forth below. The Committee wishes to note, however, that, although incalculable, there are substantial monetary and societal costs attributable to illegal immigration, and it is clear that these costs will diminish due to this legislation.

Budgetary Information

Clause 2(1)(3)(B) of rule XI of the Rules of the House of Representatives is inapplicable because the instant legislation does not provide new budget authority. Pursuant to Clause 2(1)(3)(C) of rule XI, the following estimate was prepared by the Congressional Budget Office and submitted to the Committee:

U.S. Congress,
Congressional Budget Office,
Washington, DC, July 15, 1986.

Hon. Peter W. Rodino, Jr.,
Chairnam, Committee on the Judiciary, House of Representatives, Rayburn House Office Building, Washington, DC

Dear Mr. Chairman: The Congressional Budget Office has prepared the attached cost estimate for H.R. 3810, the Immigration Control and Legislation Amendment Act of 1986.

If you wish further details on this estimate, we will be pleased to provide them.

With best wishes,
Sincerely,

Rudolph G. Penner.

Congressional Budget Office Cost Estimate

1. Bill number: H.R. 3810.
2. Bill title: Immigration Control and Legalization Amendments Act of 1986.

3. Bill status: As ordered reported by the House Committee on the Judiciary, June 25, 1986.

4. Bill purpose: H.R. 3810 make major revisions and reforms to the Immigration and Nationality Act. Title I focuses on the control of illegal immigration. Part A of this title makes the employment of unauthorized aliens unlawful and establishes a special counsel to investigate and prosecute immigration-relared unfair employment practices. Part B authorizes additional appropriations for the Immigration and Naturalization Service (INS) and the Executive Office of Immigration Review (EOIR) for fiscal years 1986 and 1987 to carry out the provisions of this act and calls for increased enforcement and adjudication activities. This part also makes it unlawful to transport any unauthorized alien into the United States and authorizes an apporpriation of $35 million for an immigration emergency fund. Part C requires a system to verify the immigration status of aliens applying for benefits under certain programs, and establishes procedures and provides for federal reimbursement of states' costs to implement and operate this system.

Title II of the bill governs the legalization of unauthorized aliens already in the country. It empowers the Attorney General to adjust the status of unauthorized aliens to that of lawfully admitted aliens eligible for temporary residence if they apply, meet certain conditions, can establish that they illegally entered the United States prior to January 1, 1982, and have been residing here continuously since then. After one year in temporary status, the Attorney General can adjust their status to that of permanent resident. In addition, it limits for a period of five years federal program benefits for which the unauthorized aliens granted resident status are eligible, and authorizes appropriations for fiscal years 1987 through 1991 to reimburse states for the costs of providing public assistance to legalized aliens and educational services to legalized alien children.

Title III reforms existing law regarding legal immigration. Part A amends those provisions of the Immigration Act relating to nonimmigrant workers (H-2 workers), provides legal resident status to certain agricultural workers, amends the procedures for obtaining approval of H-2 petitions, allows the Secretary of Labor to charge fees to recover the cost of processing applications for certification, and authorizes a program designed to recruit domestic workers for temporary labor. Part B changes certain numerical limitations, changes requirements for foreign students, amends the immigration laws regarding C-4 special immigrants, and establishes a visa waiver pilot program for certain visitors.

Titles IV and VI require a number of reports to the Congress, and Title V provides for assistance to state and local governments for the costs of incarcerating illegal aliens and certain Cuban nationals.

5. Estimated cost to the Federal Government:

[By fiscal year, in millions of dollars]

	1986	1987	1988	1989	1990	1991
DIRECT SPENDING PROVISIONS						
Required budget authority:						
Function 550		1	44	184	261	277
Function 570						
Function 600		(1)	29	120	154	171
Function 650						
Estimated outlays:						
Function 550		1	44	184	261	277
Function 570		(1)	(1)	(1)	5	16
Function 600		8	115	257	321	337
Function 650		(1)	3	18	38	55
AMOUNTS SUBJECT TO APPROPRIATION ACTION						
Estimated authorization level:						
Function 550		25	25	26	27	27
Function 600		72	630	1,132	1,332	1,395
Function 750	435	557	442	423	427	407
Estimated outlays:						
Function 500		25	25	26	27	27
Function 600		4	177	866	1,268	1,352
Function 750		442	455	428	428	411
TOTAL SPENDING						
Required budget authority/estimated authorization level	434	655	1,170	1,885	2,201	2,277
Estimated outlays		480	819	1,779	2,348	2,475
Estimated revenues		70	166	54	54	
Net Budget Impact: Estimated net increase or decrease (—) in the deficit		410	653	1,725	2,294	2,475

[1] Less than $0.5 million.

Basis of Estimate: *Control of Illegal Immigration (Functions 550, 600 and 750).*—Title I of the bill authorizes additional appropriations for the INS of $422 million in fiscal year 1986 and $419 million in fiscal year 1987, and for the Executive Office of Immigration Review of $12 million in 1986 and $15 million in 1987. The funds authorized for the INS are intended to provide improved services, enhanced community outreach and inservice training of personnel. This authorization would provide for enhanced enforcement, including enforcement of employer sanctions, and additional processing of applications and adjudication, primarily resulting from the legalization and agricultural worker programs outlined by the bill. Because this estimate assumes enactment on approximately October 1, 1986, it assumes enactment on approximately October 1, 1986, it assumes that none of the funds authorized for fiscal year 1986 will be appropriated, and therefore those authorizations will result in no outlays. While this title does not authorize appropriations for those agencies after 1987, CBO estimates that the additional activities required by this bill will result in additional costs of approximately $220 million in 1988, declining to $150 million in 1991.

This title also requires the appointment of a special counsel within the Department of Justice for Immigration-Related Unfair Employment Practices. The special counsel would be responsible for receiving and investigating complaints of such practices and bringing them, when appropriate, before specially trained administrative law judges. Based on information from the Immigration and

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Naturalization Service and the National Labor Relations Board, CBO expects this process to cost $2 million in 1987 and 1988 and $3 million in later years. The bill does not, however, authorize appropriations for this activity. Also required would be a system to validate the Social Security account numbers of all individuals employed in the United States. Employers would be required to submit each account number and receive a validation code. CBO estimates that approximately 80 million numbers would be submitted for validation each year. Based on information from the Social Security Administration, CBO estimates that this system would cost about $130 million each year, beginning in 1988, with slightly higher costs in the first year. Both of these estimates are highly uncertain.

Title I authorizes an appropriation of $35 million for an immigration emergency fund, to be used for increased enforcement of the nation's immigration laws and for providing assistance to states and localities facing major immigration problems. CBO does not show an increase in outlays as a result of this fund, because spending is prohibited unless the President declares an immigration emergency, and it is impossible to predict when, or whether, such a declaration would be made.

The bill requires that the immigration status of aliens applying for a number of federal benefit programs be verified with the INS beginning no later than October 1, 1988. All state costs would be fully reimbursed by the federal government. CBO estimates that this provision would have no significant budgetary effect in 1987 or in 1988, would reduce outlays by $25 million in 1989, and by $20 million a year thereafter. These savings are very uncertain. The only tests of the verification system have been for the Unemployment Compensation program in a few states, where savings were found to be modest. The CBO estimate for the Unemployment Compensation program is based on these test results. Savings for the Aid to Families with Dependent Children, Medicaid, and Food Stamp programs are based on the number of cases found to be in error because of alien status, as reported in the quality control data systems. This estimation procedure underestimates savings. Costs are based on information provided by the INS and assume in most cases a statewide system of checking. These costs are underestimated because some states with county-run programs would have higher costs. Also, there is expected to be considerable adjudication, because the INS data are out-of-date and incomplete; this cost cannot be estimated.

The following table summarizes the costs of Title I.

ESTIMATED BUDGET IMPACT—CONTROL OF ILLEGAL IMMIGRATION (FUNCTIONS 550, 600, AND 750)

[By fiscal year, in millions of dollars]

	1986	1987	1988	1989	1990	1991
Authorizations:						
Immigration and Naturalization Service [1]	422	419				
Executive Office of Immigration Review [1]	12	15				
Immigration emergencies		35				
Status verification [2]		([3])	([3])	−15	−19	−10
Other estimated costs [4]		2	351	317	311	286

ESTIMATED BUDGET IMPACT—CONTROL OF ILLEGAL IMMIGRATION (FUNCTIONS 550, 600, AND 750)—Continued

[By fiscal year, in millions of dollars]

	1986	1987	1988	1989	1990	1991
Total estimated authorizations	434	471	351	302	301	276
Estimated outlays		371	364	297	292	270

[1] It is assumed that enactment of this bill will not allow time for funds to be appropriated in fiscal year 1986, therefore, no outlays are shown for the 1986 authorizations.
[2] The bill authorizes such sums as may be necessary for the INS. This estimate also includes CBO's estimate of costs and savings in functions 550 and 600.
[3] Less than $0.5 million.
[4] This amount reflects estimated costs for which no authorizations are provided in the bill. These costs are largely for INS enforcement and processing activities after 1987, and for the required system for validating an individual's Social Security number.

Legalization (Functions 550, 570, 600, and 650).—By legalizing some unauthorized aliens currently in the United States, Title II would increase federal outlays in functions 550 (Health, including Medicaid), 570 (Medicare), 600 (Income Security), and 650 (Social Security). First, the provisions that legalize unauthorized aliens would entitle the aliens to receive benefits after five years from a number of federal assistance programs. Such programs as Aid to Families with Dependent Children (AFDC), Supplemental Security Income (SSI), Medicaid, and Food Stamps now require recipients to be citizens or have resident status. Because the provisions of the bill preclude most aliens granted resident status from receiving any program of federal financial assistance based on "financial need," Medicaid, and Food Stamps for a period of five years, federal outlays for these prgorams generally do not begin until fiscal year 1992, beyond our estimating period. An exception is made in the bill for the aged, blind, and disabled and for medical assistance provided to children under 18 years of age, pregnant women, and those in need of emergency services. Hence, the cost estimate does show increased federal outlays for SSI, Medicaid, and Food Stamps beginning in fiscal year 1987. In addition, in other programs that are not based on "financial need," such as Disability Insurance (DI), some legalized aliens who would not have collected benefits would now be expected to do so.

Second, Title II provides an authorization for the appropriation of such sums as may be necessary in fiscal years 1987 through 1991 to reimburse states for 100 percent of the costs of public assistance to eligible legalized aliens. Aliens granted resident status are eligible for five years. The bill also authorizes payments over the same five-year period to state education agencies to assist in providing educational services for the legalized alien children in elementary and secondary schools.

Added federal program outlays as a result of legalizing unauthorized aliens under Title II of the bill are shown in the table below. These added outlays are estimated to be $8 million, $272 million, $1,143 million, $1,646 million, and $1,777 million in fiscal years 1987 through 1991, respectively.

This estimate is very uncertain, particularly because of the three factors discussed below. First, this estimate includes federal outlays for the grants to states that are large enough to cover the full estimated costs to states for public assistance to the legalized aliens and education services for the legalized alien children. Less than

the full costs, however, might be appropriated. Second, this estimate depends importantly on the number of unauthorized aliens in the United States, for which little hard evidence exists. It has been generally accepted that there were 3 million to 6 million unauthorized aliens in the United States in the late 1970s. The CBO estimate uses 4.5 million aliens in 1977, the midpoint of the range. Even less is known about how the numbers of unauthorized aliens in the United States may have changed in recent years, although anecdotal evidence indicates there has been some net inflow. Based on conversations with persons knowledgeable about the unauthorized alien population, CBO assumes a net increase of 150,000 in each year beginning in 1980. In 1986, then, CBO assumes that there are 5.6 million unauthorized aliens in the United States.

Of the 5.6 million unauthorized aliens, CBO estimates that 40 percent have resided continuously in the United States since January 1, 1982, making them eligible for legalization under this bill. This figure is based on percentages from Immigration and Naturalization Service (INS) studies, which have been adjusted upward to reflect the assumption that some unauthorized aliens are aware of the possibility of legalization because of legislative activity in recent years. Among those eligible, we assume—again based on conversations with experts—that approximately 60 percent would apply for and be granted resident status. The resulting number of unauthorized aliens who would be granted resident status is estimated to be 1.4 million.

Finally, the number of legalized aliens who would qualify for government assistance programs is uncertain. In large part, this reflects a lack of data on the economic and demographic characteristics of unauthorized aliens—for example, their employment status and wages or their age and marital status. In developing the estimates of numbers of legalized aliens who would receive benefits from government programs, CBO assumes that the unauthorized aliens would have to show at the time of their application for residency that they had not been nor would they be likely to be "public charges," as specified in Section 212 of the Immigration and Nationality Act. However, the bill would allow resident status to an unemployed alien if that alien could demonstrate a history of employment without reliance on public cash assistance. Thus, at the time the aliens would become residents, most would presumably be working. Over time, however, they could be expected to resemble the U.S. population as to receipt of benefits from entitlement programs. By 1990, CBO assumes that the percentage of unauthorized aliens receiving government benefits would resemble that of the U.S. population for similar age, sex, ethnic origin, and income groupings. In the interim years, CBO assumes that a growing fraction of potential eligibles would in fact receive benefits: 5 percent in 1987, 30 percent in 1988, and 75 percent in 1989.

In addition to the general basis of these estimates, each individual program estimate entailed specific procedures and assumptions. The details for each program are discussed below.

The SSI program provides benefits to aged, blind, and disabled persons. Benefit levels are set by the federal government, which pays the full cost of the program, although states may supplement federal benefits and most do. Under this bill, legalized aliens would

be eligible to receive SSI upon confirmation of residency status. Costs to the federal government are estimated to rise from an insignificant amount in 1987 to $116 million in 1991. CBO's cost estimate is based on a recipiency rate of 0.90 percent of the alien population for the aged and 0.94 percent for the blind and disabled. The recipiency rate for the aged is based on Census data which show 1.80 percent of illegal aliens to be aged, an assumed income eligibility of 100 percent, and a participation rate for the eligible of 50 percent. The recipiency rate for the blind and disabled is based on the current recipiency rate for the population. The aliens are estimated to receive the full SSI basic benefit, or $4,131 in 1987.

Food stamps are issued to eligible low-income households. Benefits (and approximately one-half of state administrative expenses) are funded by the Federal Government. As with AFDC, most legalized aliens could not receive food stamps until 1992, although legalized aliens who received SSI could also receive food stamps. Food stamp costs are estimated to be insignificant in 1987, rising to $6 million in 1991. This figure is based on the estimated number of aliens added to the SSI rolls and a food stamp participation rate of 45 percent, the estimated current rate of SSI recipients. Average annual benefits per person in 1987 are estimated to be $444.

The Unemployment Compensation program provides weekly cash benefits to workers who are involuntarily unemployed and who have had at least a moderate amount of work experience during a one-year period prior to losing their jobs. Under this bill, Unemployment Compensation cost for newly legalized alien workers are estimated to rise from $3 million in 1987 to $115 million in 1991. This estimate is based on several assumptions for newly legalized alien workers. Consistent with recent labor force data on young Hispanics, CBO assumes that 80 percent of these workers would participate in the labor force, a higher rate than the average of the U.S. population. Because most probably work in service industries, which are less prone to cyclical unemployment, and because even low-wage jobs in this country probably appear attractive when compared to those in the country of origin, CBO assumes that the newly-legalized population would have unemployment rates one percentage point lower than those in effect for the rest of the U.S. population. Further, assuming, as some evidence indicates, that these individuals' earnings are about 60 percent of those of comparable U.S. production or nonsupervisory workers (and assuming a 50 percent wage replacement rate), CBO estimates that the average weekly benefit amount for these workers would be about $97 in 1987, one-fourth lower than that for the remainder of the population.

The Disability Insurance (DI) program covers persons who are totally disabled (whose disability is expected to last at least 12 months or result in death) and who have sufficient work histories in covered employment. Costs in DI of the legalized aliens are estimated to rise from an insignificant amount in 1987 to $54 million in 1991. Because the evidence indicates that unauthorized aliens are relatively young on average, they would be less likely to be disabled than the U.S. population as a whole. Also, because they have been in the United States for relatively short periods of time, they might not qualify for DI, which requires for most workers covered

earnings during 20 out of the last 40 calendar quarters. For all of these reasons, their DI recipiency rate would be less than that of the U.S. population; CBO estimates the rate to be about 0.1 percent in 1987, with this rate rising to about 0.7 percent in 1991. Their benefit levels would also be less, reflecting lower than average wages and shorter work histories. The CBO estimates average benefits to be about $4,300 in 1991.

The Medicaid program provides health care coverage to recipients of AFDC and SSI and to others who may qualify as "medically needy." Under the bill, Medicaid would be provided to aliens on SSI and to children, pregnant women, and emergency cases who could meet Medicaid's eligibility criteria. Costs are estimated to rise from $1 million in 1987 to $323 million in 1991. Medicaid beneficiaries are based on numbers of aliens estimated to receive SSI and numbers estimated to receive AFDC who would be children, pregnant women, or in need of emergency services, with some increase for the medically needy. Benefits are current averages per SSI or AFDC enrollee, adjusted to 1987 and later.

Costs in the Medicare program, which provides health care coverage to the aged and disabled covered by Social Security, would rise to $16 million in 1991. These costs would be for those aliens who would receive DI.

Reimbursements to states for public assistance costs are estimated to cost $2 million in 1987 and $527 million in 1991. These reimbursements are based on costs in state and local General Assistance (GA) programs. These programs are fully-funded by states and localities and provide benefits to low-income persons and families who do not qualify for the federally-funded cash welfare programs. GA provides both cash payments and medical coverage. Two groups of aliens would qualify for GA: those who would never be eligible for federal welfare programs (for example, low-income working two-parent families with children, and non-aged, non-disabled couples or single persons without children) and those who would be made ineligible for AFDC by the bill for a period of five years.

Among the first group, CBO estimates that 1.3 percent of the aliens would receive an average annual cash GA benefit of $1,725 in 1987. This estimate is based on current recipiency rates and benefit levels in GA programs. Among the second group, CBO's estimate for families who would have qualified for AFDC is based on the assumption that 52 percent of the aliens given resident status would be married men and women, reflecting demographic data on unauthorized aliens, which show about 79 percent to be adults and the majority to be young and male, and marital rates in the United States. Of the married men and women, 4.5 percent of those not of Spanish origin and 17.0 percent of those of Spanish origin are estimated to receive AFDC. These rates of AFDC recipiency are those which currently exist in the program. The average annual cash benefit for these alien families is estimated to be $2,150 in 1987. These aliens would also receive medical GA. Their average annual medical benefits are estimated to be $715 in 1987.

Reimbursements to states for education services are estimated to cost $1 million in 1987 and $712 million in 1981. This cost assumes a full appropriation of funds to cover total costs of educating eligible alien children. Of the total legalized alien population, 15 per-

cent—or about 200,000—are estimated to be children of school age. Average per pupil costs were $3,086 during the 1983-1984 school year, the latest data available. CBO assumes that this 1983-1984 per pupil cost would be used in calculating reimbursements to the states in 1987. This is consistent with current procedures in Chapter I education aid to disadvantaged children. Outlays reflect a spending pattern of 2 percent in the first year, 77 percent in the second year, and 21 percent in the third year.

The table on the following page summarizes the estimated costs associated with Title II.

Agricultural Worker Provisions (Functions 500, 550, 600, and 650).—Title III of the bill provides for the availability of temporary agricultural workers and for the legalization of certain illegal alien workers recently employed in agriculture. CBO estimates the agricultural worker provisions would increase federal outlays by $56 million in 1987, rising to $324 million by 1991.

The bill authorizes such sums as may be necessary to enable the Department of Labor (DOL) to make determinations and issue certificates under a new H-2A worker program, targeted at agriculture. The H-2 worker program allows foreign workers to enter the United States temporarily to work in jobs for which employers cannot find domestic workers. In making this estimate, it is assumed that the combination of employer sanctions and a strengthened INS would act as effective deterrents to the hiring of illegals to perform agricultural labor. It is further assumed that the H-2A worker program would expand to fill the otherwise unmet demand for agricultural labor, thereby increasing the administrative costs of DOL.

According to staff from the Department of Agriculture (USDA), if employer sanctions were effectively enforced, growers would need between 250,000 and 500,000 guest workers. Because the CBO assumes that about 250,000 illegal alien workers in agriculture would be legalized under the special agricultural worker provision discussed below, the number of H-2A workers could range up to 250,000 guest workers. The DOL is currently receiving about 800 applications per year for H-2 agricultural workers, and each application requests an average of 25 workers. Administrative costs were about $3 million in 1985, or $3,750 per application, for the agricultural part of the H-2 worker program, and they are estimated to increase by about 5 percent per year.

Currently, those illegal immigrants who work in agriculture are located primarily in the West and Southwest, while most H-2 workers are employed in the East. Since western agricultural concerns tend to be far larger than eastern, it is assumed that future applications would be for about 40 workers on average. Using a projected cost per application of about $4,100 in 1987, CBO estimates that 1987 administrative costs would be $13 million. This figure is based on an estimated 3,125 applications: 125,000 guest workers—the midpoint of the estimated range noted above—and an estimated 40 workers per application.

ESTIMATED BUDGET IMPACT—LEGALIZATION (FUNCTIONS 550, 570, 600, AND 650)

[By fiscal year, in millions of dollars]

	1987	1988	1989	1990	1991
SSI (Function 600):					
Required budget authority	(1)	23	83	10	116
Estimated outlays	(1)	23	83	10	116
Food stamps (Function 600):					
Estimated authorization level	(1)	1	4	6	6
Estimated outlays	(1)	1	4	6	6
Unemployment compensation (Function 600):					
Required budget authority					
Estimated outlays	3	47	88	116	115
Disability insurance (Function 650):					
Required budget authority					
Estimated outlays	(1)	3	18	38	54
Medicaid (Function 550):					
Required budget authority	1	39	156	218	231
Estimated outlays	1	39	156	218	231
Medicare (Function 570):					
Required budget authority					
Estimated outlays	(1)	(1)	(1)	5	16
Reimbursement of State public assistance costs (Function 600):					
Estimated authorization level	2	96	370	507	527
Estimated outlays	2	96	370	507	527
Payments to States for education costs (Function 600):					
Estimated authorization level	70	516	690	717	754
Estimated outlays	1	63	423	653	712
Subtotal: Direct spending provisions:					
Required budget authority	1	62	239	321	347
Estimated outlays	4	112	345	480	532
Subtotal: Amounts subject to appropriation action:					
Estimated authorization level	72	613	1,064	1,230	1,288
Estimated outlays	4	160	798	1,166	1,245
Total:					
Estimated authorization level	73	675	1,303	1,551	1,635
Estimated outlays	8	272	1,143	1,646	1,777

[1] Less than $0.5 million

In addition, the bill requires the federal government to establish a program to (a) recruit domestic workers to perform services that might otherwise be performed by temporary foreign nonimmigrant laborers, and (b) monitor the terms and conditions under which temporary agricultural workers are employed in the United States. A total of $10 million per year beginning in 1987 is authorized for these purposes.

The estimated budget impact of the temporary agricultural worker program in H.R. 3810 is summarized in the following table.

ESTIMATED BUDGET IMPACT—TEMPORARY AGRICULTURAL WORKERS (FUNCTION 500)

[By fiscal year, in millions of dollars]

	1987	1988	1989	1990	1991
H-2A Worker Program:					
Estimated authorization level	13	13	14	15	15
Estimated outlays	13	13	14	15	15
Domestic worker recruitment:					
Authorization level	10	10	10	10	10
Estimated outlays	10	10	10	10	10

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The bill's provision for special agricultural workers would establish legal status for agricultural workers who could demonstrate that they had worked at least 60 days in agricultural employment during the period from May 1, 1985 to May 1, 1986. Since these workers would be provided with legal resident status, federal outlays for entitlement program benefits would rise by an estimated $5 million in 1987 and $295 million in 1991.

Workers covered under the special agricultural worker provision are estimated to total about 250,000. This figure was derived by adjusting the number of farm workers upward for turnover during the year and downward for the 60-day work requirement. Further, it is assumed that about 25 percent of farm workers are illegal aliens and that 60 percent would come forward to apply for and be accepted as legal residents. CBO was unable to determine whether the provisions designed to allow additional special agricultural workers beginning in 1990 in the event of a worker shortage would increase the number granted resident status in the future.

Most of the additional entitlement spending would occur in means-tested benefit programs such as AFDC, Medicaid, SSI, and Food Stamps, although the program with the largest increase would be Unemployment Compensation. Unemployment Compensation benefits are estimated to increase from $5 million in 1987 to $61 million by 1991. These estimates are based on the assumptions that unemployment rates of agricultural workers are about 75 percent higher than the national average, agricultural wages are lower than overall average wages, and that the average weekly benefit would be about $97 in 1987. AFDC costs are expected to increase as the number of recipient families is estimated to rise by about 14,000 by 1990. Similarly, the number of SSI recipients is estimated to increase by about 4,600 persons by 1990. Medicaid outlays associated with the increases in AFDC and SSI beneficiaries are estimated to rise by about $5 million in 1988 and $53 million by 1991.

Title III also specifies that a commission would be established that would examine the impacts of the special agricultural worker provisions on wages, working conditions, and issues. The CBO estimates that the costs of the commission, including personnel and other non-labor expenses, would be about $2 million annually over the next five years.

The table on the following page summarizes the estimated costs associated with the special agricultural worker provisions.

Reports to the Congress (Function 750).—Title IV requires the preparation of a number of Presidential reports. These include a comprehensive triennial report on admissions under the Immigration and Nationality Act and the impact of those admissions, reports on unauthorized alien employment and discrimination in employment, biennial reports on the implementation of the temporary agricultural worker program, two reports on the legalization program and its impact, and a report on the visa waiver pilot program. Title VI requires the Attorney General to prepare a report for the Congress on the resources required by the INS to carry out its enforcement and service responsibilities. The cost of these reports is assumed to be included in the amounts authorized for the INS.

In addition, the bill requires the Civil Rights Commission to monitor the implementation and enforcement of the employer sanctions provisions and investigate any allegations of unlawful discrimination due to these provisions. The Commission is to report as to whether implementation and enforcement of these provisions has resulted in a pattern of unlawful discrimination. Implementation of this provision is expected to cost approximately $1 million each year.

State and Local Assistance for Incarceration of Illegal Aliens and Certain Cuban Nationals (Function 750).—Title V would require the Attorney General to reimburse state and local governments for the costs of imprisoning these aliens and Cuban nationals convicted of felonies and for their pre-trial and post-trial detention. Appropriations are authorized for such sums as are necessary to carry out this provision. CBO estimates that reimbursements would be required for approximately 6,000 prisoners at an average cost of about $14,000 per prisoner-year in 1987, rising to $17,000 per year by 1991.

ESTIMATED BUDGET IMPACT—INCARCERATION COSTS (FUNCTION 750)

[By fiscal year, in millions of dollars]

	1987	1988	1989	1990	1991
Estimated authorization level	85	90	95	100	105
Estimated outlays	70	90	95	100	105

Revenues.—CBO assumes that the Attorney General would collect a fee of $100 for each application submitted by an alien for permanent or temporary residency under the legalization provisions in Title II. CBO estimates that 1.8 million aliens would apply for legal temporary residency—0.6 million in 1987 and 1.2 million in 1988. In 1988 through 1990, the 1.4 million aliens granted temporary residency would apply for permanent residency. The special agricultural workers would also apply for legalization during 1987 and 1988: an estimated 0.1 million in 1987 and 0.2 million in 1988. With a fee of $100 per application, CBO estimates that the government would receive a total of $344 million over the four years from legalization application fees.

ESTIMATED BUDGET IMPACT—SPECIAL AGRICULTURAL WORKERS (FUNCTIONS 500, 550, 600, AND 650)

[By fiscal year, in millions of dollars]

	1987	1988	1989	1990	1991
AFDC (Function 600):					
Required budget authority	(1)	6	25	35	36
Estimated outlays	(1)	6	25	35	36
SSI (Function 600):					
Required budget authority	(1)	(1)	16	20	23
Estimated outlays	(1)	(1)	16	20	23
Food Stamps (Function 600):					
Estimated authorization level	(1)	5	23	32	33
Estimated outlays	(1)	5	23	32	33

ESTIMATED BUDGET IMPACT—SPECIAL AGRICULTURAL WORKERS (FUNCTIONS 500, 550, 600, AND 650)—Continued

[By fiscal year, in millions of dollars]

	1987	1988	1989	1990	1991
Unemployment compensation (Function 600):					
Required budget authority					
Estimated outlays	5	39	59	61	61
Disability Insurance (Function 650):					
Required budget authority					
Estimated outlays	(1)	(1)	(1)	(1)	1
Medicaid (Function 550):					
Required budget authority	(1)	5	35	50	53
Estimated outlays	(1)	5	35	50	53
Reimbursement of State public assistance costs (Function 600):					
Estimated authorization level	(1)	12	59	84	88
Estimated outlays	(1)	12	59	84	88
Agricultural Worker Commission (Function 500):					
Estimated authorization level	2	2	2	2	2
Estimated outlays	2	2	2	2	2
Subtotal: Direct spending provisions:					
Required budget authority	(1)	11	76	105	112
Estimated outlays	5	50	135	166	174
Subtotal: Amounts subject to appropriation action:					
Estimated authorization level	2	19	84	118	123
Estimated outlays	2	19	84	118	123
Total:					
Estimated authorization level/required budget authority	(1)	30	160	222	235
Estimated outlays	5	69	219	284	297

[1] Less than $0.5 million.

In addition, the bill allows the Secretary of Labor to impose a fee on employers importing temporary agricultural workers to recover the costs of processing applications for certification. It has not yet been determined whether the Secretary of Labor would impose such a fee and CBO is unable at this time to estimate how much money would be collected as a result of this fee. Also, the bill permanently exempts employers from paying Federal Unemployment Tax Act taxes on wages paid to H–2 agricultural workers. This provision has a negligible revenue effect.

Part B to Title I increases penalties for immigration-related violations and Part A outlines employer penalties for illegal employment of unauthorized aliens. No estimate can be made of the fines that would be collected by the federal government as a result of these sections.

In addition to the above effects on federal revenues, there are potential effects on individual income tax revenues and social insurance contributions. Revenues would increase if some of the aliens who are not having taxes withheld from their wages at present were to have taxes withheld as a result of this legislation. Revenues would decrease if aliens who currently have taxes withheld and are entitled to refunds that they do not claim would cliam refunds as a result of this bill. Given the uncertainties concerning characteristics of illegal aliens, and rough estimates showing the two effects above to be approximately offsetting, CBO shows no effect of the bill on these revenue sources.

ESTIMATED REVENUE EFFECT

[By fiscal year, in millions of dollars]

	1987	1988	1989	1990	1991
Revenues from application fees	70	166	54	54	

6. Estimated cost to state and local governments: By legalizing certain unauthorized aliens currently residing in the United States, this bill could have sizable effects on state and local government budgets. Unauthorized aliens are not eligible for welfare programs that are partially- or full-funded by states and localities. When legalized, these aliens would be eligible for such programs—immediately in the case of state programs and after five years in the case of programs financed by federal and state governments jointly. The special agricultural workers would be eligible for federal and state programs immediately. During the estimation period, however, states and localities would have no added costs under CBO's assumptions. They would, in fact, experience budgetary savings to the extent funds were appropriated to cover their public assistance, education, and imprisonment costs, as authorized in the bill. After 1991, however, when the public assistance and education reimbursements were no longer available, states and localities would experience increased costs.

As shown in the table, public assistance costs would be zero to the extent the authorized reimbursements covered them in full, as CBO has assumed. The full amounts of any reimbursements for education services are estimated to result in state and local savings. States were required to educate illegal alien children by the Supreme Court in *Plyler* vs. *Doe* (June 15, 1982). Finally, any reimbursements for costs of incarcerating illegal aliens currently borne by states and localities would also result in budgetary savings.

[By fiscal year, in millions of dollars]

	1987	1988	1989	1990	1991
Public assistance					
Education assistance	−1	−63	−423	−653	−712
Assistance for imprisonment costs	−70	−90	−95	−100	−105
Total estimated state and local outlays	−71	−153	−518	−753	−817

A number of factors make these estimates uncertain. For purposes of this estimate, it is assumed that funds for reimbursements to states would be appropriated in full. If less than this amount were appropriated, states and localities would have lower savings or even experience budgetary costs. On the other hand, with a full appropriation, savings to states and localities would be higher than CBO has estimated. Certain current expenditures by states and localities would be covered under the grant: free health care provided to unauthorized aliens in public hospitals, assistance to Cuban and Haitian entrants, and any public assistance being received ille-

gally by unauthorized aliens. However, CBO does not have sufficient information to estimate these potential savings.

In addition, other titles of the bill could affect state and local budgets. If the provisions of the bill that provide for employer sanctions and other means of reducing the flow of unauthorized aliens into the United States are effective, there would be some associated savings to state and local governments. For example, there would be fewer alien children to educate. The CBO cost estimate does not include such savings, given the uncertainties concerning flows of unauthorized aliens into the United States and the potential effectiveness of the bill's sanction provisions.

7. Estimate comparison: None.

8. Previous CBO estimate: On August 20, 1985, CBO prepared a cost estimate for S. 1200, the Immigration Reform and Control Act of 1985, as ordered reported by the Senate Committee on the Judiciary, July 30, 1985. The estimated budget impact of S. 1200 is shown below:

[By fiscal year, in millions of dollars]

	1986	1987	1988	1989	1990
Estimated net increase or decrease (−) in the deficit	−25	99	126	341	328

S. 1200 authorized total appropriations for the INS of $840 million in 1987 and $830 million in 1988. CBO's estimate of the impact of that authorization was the increase over the existing baseline funding level for INS. The Senate bill did not authorize appropriations for the Executive Office of Immigration Review.

The legislation provisions of H.R. 3810 and S. 1200 also differ significantly. First, in H.R. 3810, unauthorized aliens qualify for residence status if they arrived in the United States before January 1, 1982. In S. 1200, they qualify if they arrived before January 1, 1980. Consequently, the House bill would make more aliens eligible for resident status—1.4 million versus 0.6 million—and would result in higher outlays for state assistance and federally-funded income security and health programs. The House bill also legalizes unauthorized aliens who worked in agriculture between May 1, 1985 and May 1, 1986, adding another 0.25 million aliens who would receive federal program benefits immediately. Second, S. 1200 provides no education assistance to states. Third, S. 1200 precludes receipt of federal program benefits based on "financial need" for six years, instead of H.R. 3810's five years, and does not except the aged and disabled or children, pregnant women, and medical emergencies from the prohibition on receipt of federal benefits. Fourth, S. 1200 authorizes a capped entitlement for payments to states of $300 million a year for the first two years and $600 million a year for the next four years, beginning with the year in which the application period ends, compared to authorization of full reimbursement for five years in H.R. 3810. Finally, S. 1200 slows the legalization process by an estimated two years by requiring a Legalization Commission to find that more effective enforcement measures had been instituted with adequate resources to cur-

tail the entry and stay of unauthorized aliens before legalization could proceed.

9. Estimate prepared by: Janice Peskin, Marjorie Miller, Linda Radey, Paul Cullinan, Lynne Davidson, Julia Isaacs, and Anne Manley.

10. Estimate approved by: C.G. Nuckols, for James L. Blum, Assistant Director for Budget Analysis.

COMMITTEE RECOMMENDATION

After careful consideration of this legislation, the Committee is of the opinion that this bill should be enacted and accordingly recommends that H.R. 3810, as amended, do pass.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

IMMIGRATION AND NATIONALITY ACT

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* * * * * * *

TITLE I—GENERAL

DEFINITIONS

SECTION 101. (a) As used in this Act—
(1) * * *

* * * * * * *

(15) The term "immigrant" means every alien except an alien who is within one of the following classes of nonimmigrant aliens—
(A) * * *

* * * * * * *

(H) an alien having a residence in a foreign country which he has no intention of abandoning (i) who is of distinguished merit and ability and who is coming temporarily to the United States to perform services of an exceptional nature requiring such merit and ability, and who, in the case of a graduate of a medical school coming to the United States to perform services as a member of the medical profession, is coming pursuant to an invitation from a public or nonprofit private educational or research institution or agency in the United States to teach or conduct research, or both, at or for such institution or agency; or (ii) who is coming temporarily to the United States [to perform temporary services or labor,] *(a) to perform agricultural labor or services, as defined by the Secretary of Labor in regulations and including agricultural labor defined in section 3121(g) of the Internal Revenue Code of 1954 and agriculture as defined in section 3(f) of the Fair Labor Standards Act of 1938 (29 U.S.C. 203(f)), of a temporary or seasonal nature, or (b) to perform other temporary service or labor* if unemployed persons capable of performing such service or labor cannot be found in this country, but this clause shall not apply to graduates of medical schools coming to the United States to perform services as members of the medical profession; or (iii) who is coming temporarily to the United States as a trainee, other

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than to receive graduate medical education or training; and the alien spouse and minor children of any such alien specified in this paragraph if accompanying him or following to join him(;)

* * * * * * *

(L) an alien who, immediatly preceding the time of his application for admission into the United States, has been employed continuously for one year by a firm or corporation or other legal entity or an affiliate or subsidiary thereof and who seeks to enter the United States temporarily in order to continue to render his services to the same employer or a subsidiary or affiliate thereof in a capacity that is managerial, executive, or involves specialized knowledge, and the alien spouse and minor children of any such alien if accompanying him or following to join him; [or]

(M)(i) an alien having a residence in a foreign country which he has no intention of abandoning who seeks to enter the United States temporarily and solely for the purpose of pursuing a full course of study at an established vocational or other recognized nonacademic institution (other than in a language training program) in the United States particulary designated by him and approved by the Attorney General, after consultation with the Secretary of Education, which institution shall have agreed to report to the Attorney General the termination of attendance of each nonimmigrant nonacademic student and if any such institution fails to make reports promptly the approval shall be withdrawn and (ii) the alien spouse and minor children of any such alien if accompanying him or following to join him[.] *; or*

(N)(i) the parent of an alien accorded the status of special immigrant under paragraph (27)(I)(i), but only if and while the alien is a child, or

(ii) a child of such parent or of an alien accorded the status of a special immigrant under clause (ii), (iii), or (iv) of paragraph (27)(I).

* * * * * * *

(27) The term "special immigrant" means—

(A) * * *

* * * * * * *

(G) an immigrant, and his accompanying spouse and children, who was an employee of the Panama Canal Company or Canal Zone government on the effective date of the exchange of instruments of ratification of such Panama Canal Treaty of 1977, who has performed faithful service for five years or more as such an employee, and whose personal safety, or the personal safety of whose spouse or children, as a direct result of such Treaty, is reasonably placed in danger because of the special nature of any of that employment; [or]

(H) an immigrant, and his accompanying spouse and children, who—

(i) has graduated from a medical school or has qualified to practice medicine in a foreign state,

(ii) was fully and permanently licensed to practice medicine in a State on January 9, 1978, and was practicing medicine in a State on that date,

(iii) entered the United States as a nonimmigrant under subsection (a)(15)(H) or (a)(15)(J) before January 10, 1978, and

(iv) has been continuously present in the United States in the practice or study of medicine since the date of such entry[.] ; *or*

(I)(i) an immigrant who is the unmarried son or daughter of an officer or employee, or of a former officer or employee, of an international organization described in paragraph (15)(G)(i), and who (I) while maintaining the status of a nonimmigrant under paragraph (15)(G)(iv) or paragraph (15)(N), has resided and been physically present in the United States for periods totaling at least one-half of the seven years before the date of application for a visa or for adjustment of status to a status under this subparagraph and for a period or periods aggregating at least seven years between the ages of five and 21 years, and (II) applies for admission under this subparagraph no later than his twenty-fifth birthday or six months after the date this subparagraph is enacted, whichever is later;

(ii) an immigrant who is the surviving spouse of a deceased officer or employee of such an international organization, and who (I) while maintaining the status of a nonimmigrant under paragraph (15)(G)(iv) or paragraph (15)(N), has resided and been physically present in the United States for periods totaling at least one-half of the seven years before the date of application for a visa or for adjustment of status to a status under this subparagraph and for a period or periods aggregating at least 15 years before the date of the death of such officer or employee, and (II) applies for admission under this subparagraph no later than six months after the date of such death or six months after the date this subparagraph is enacted, whichever is later;

(iii) an immigrant who is a retired officer or employee of such an international organization, and who (I) while maintaining the status of a nonimmigrant under paragraph (15)(G)(iv), has resided and been physically present in the United States for periods totaling at least one-half of the seven years before the date of application for a visa or for adjustment of status to a status under this subparagraph and for a period or periods aggregating at least 15 years before the date of the officer's or employee's retirement from any such international organization, and (II) applies for admission under this subparagraph before January 1, 1993, and no later than six months after the date of such retirement or six months after the date this subparagraph is enacted, whichever is later; or

(iv) an immigrant who is the spouse of a retired officer or employee accorded the status of special immigrant under clause (iii), accompanying or following to join such retired officer or employee as a member of his immediate family.

* * * * * * *

(b) As used in titles I and II—

(1) The term "child" means an unmarried person under twenty-one years of age who is—

(A) a legitimate child;

* * * * * * *

(D) an illegitimate child, by, through whom, or on whose behalf a status, privilege, or benefit is sought by virtue of the relationship of the child to its natural mother *or to its natural father if the father has or had a bona fide parent-child relationship with the person;*

* * * * * * *

POWERS AND DUTIES OF THE ATTORNEY GENERAL AND THE COMMISSIONER

SEC. 103. (a) * * *

* * * * * * *

(c) The Attorney General shall develop, and may from time to time modify, a contingency plan to provide for the allocation and management of personnel and resources in the event of an immigration emergency. In developing such a plan, the Attorney General shall consult with the Judiciary Committees of the House of Representatives and of the Senate and with State and local governments.

* * * * * * *

TITLE II—IMMIGRATION

CHAPTER 1—SELECTION SYSTEM

* * * * * * *

NUMERICAL LIMITATION TO ANY SINGLE FOREIGN STATE

SEC. 202. (a) * * *

* * * * * * *

(c) Any immigrant born in a colony or other component or dependent area of a foreign state overseas from the foreign state, other than a special immigrant, as defined in section 101(a)(27), or an immediate relative of a United States citizen, as defined in section 201(b), shall be chargeable for the purpose of the limitation set forth in section 202(a), to the foreign state, and the number of immigrant visas available to each such colony or other component or dependent area shall not exceed **[**six hundred**]** *5,000* in any one fiscal year.

* * * * * * *

(e) Whenever the maximum number of visas have been made available under section 202 to natives of any single foreign state as defined in subsection (b) of this section or any dependent area as defined in subsection (c) of this section in any fiscal year, in the next following fiscal year a number of visas, not to exceed 20,000, in the case of a foreign state or **[**600**]** *5,000* in the case of a dependent area, shall be made available and allocated as follows:

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(1) Visas shall first be made available, in a number not to exceed 20 per centum of the number specified in this subsection, to qualified immigrants who are the unmarried sons or daughters of citizens of the United States.

* * * * * * *

SPECIAL AGRICULTURAL WORKERS

SEC. 210. (a) PERMANENT RESIDENCE.—The Attorney General shall adjust the status of an alien to that of an alien lawfully admitted for permanent residence if the Attorney General determines that the alien meets the following requirements:

(1) APPLICATION PERIOD.—The alien must apply for such adjustment during the 18-month period beginning on the first day of the seventh month that begins after the date of enactment of this section.

(2) PERFORMANCE OF SEASONAL AGRICULTURAL SERVICES.—The alien must establish that he performed seasonal agricultural services in the United States for at least 60 man-days during the 12-month period ending on May 1, 1986. For purposes of the previous sentence, performance of seasonal agricultural services in the United States for more than one employer on any one day shall be counted as performance of services for only 1 man-day.

(3) ADMISSIBLE AS IMMIGRANT.—The alien must establish that he is admissible to the United States as an immigrant, except as otherwise provided under subsection (c)(2).

(b) APPLICATIONS FOR ADJUSTMENT OF STATUS.—

(1) TO WHOM MAY BE MADE.—

(A) WITHIN THE UNITED STATES.—The Attorney General shall provide that applications for adjustment of status under subsection (a) may be filed—

(i) with the Attorney General, or

(ii) with a designated entity (designated under paragraph (2)), but only if the applicant consents to the forwarding of the application to the Attorney General.

(B) OUTSIDE THE UNITED STATES.—The Attorney General, in cooperation with the Secretary of State, shall provide a procedure whereby an alien may apply for adjustment of status under subsection (a) at an appropriate consular office outside the United States. If the alien otherwise qualifies for such adjustment, the Attorney General shall provide such documentation of authorization to enter the United States and to have the alien's status adjusted upon entry as may be necessary to carry out the provisions of this section.

(2) DESIGNATION OF ENTITIES TO RECEIVE APPLICATIONS.—For purposes of receiving applications under this section, the Attorney General—

(A) shall designate qualified voluntary organizations and other qualified State, local, community, farm labor organizations, and associations of agricultural employers, and

(B) may designate such other persons as the Attorney General determines are qualified and have substantial experience, demonstrated competence, and traditional long-

term involvement in the preparation and submittal of applications for adjustment of status under section 209 or 245, Public Law 89-732, or Public Law 95-145.

(3) PROOF OF ELIGIBILITY.—An alien may establish that he meets the requirement of subsection (a)(2) through government employment records, records supplied by employers or collective bargaining organizations, and such other reliable documentation as the alien may provide. The Attorney General shall establish special procedures to credit properly work in cases in which an alien was employed under an assumed name.

(4) TREATMENT OF APPLICATIONS BY DESIGNATED ENTITIES.—Each designated entity must agree to forward to the Attorney General applications filed with it in accordance with paragraph (1)(A)(ii) but not to forward to the Attorney General applications filed with it unless the applicant has consented to such forwarding. No such entity may make a determination required by this section to be made by the Attorney General.

(5) LIMITATION ON ACCESS TO INFORMATION.—Files and records prepared for purposes of this section by designated entities operating under this section are confidential and the Attorney General and the Service shall not have access to such files or records relating to an alien without the consent of the alien.

(6) CONFIDENTIALITY OF INFORMATION.—Neither the Attorney General, nor any other official or employee of the Department of Justice, or bureau or agency thereof, may—

(A) use the information furnished pursuant to an application filed under this section for any purpose other than to make a determination on the application or for enforcement of paragraph (7),

(B) make any publication whereby the information furnished by any particular individual can be identified, or

(C) permit anyone other than the sworn officers and employees of the Department or bureau or agency or, with respect to applications filed with a designated entity, that designated entity, to examine individual applications.

Anyone who uses, publishes, or permits information to be examined in violation of this paragraph shall be fined in accordance with title 18, United States Code, or imprisoned not more than five years, or both.

(7) PENALTIES FOR FALSE STATEMENTS IN APPLICATIONS.—

(A) CRIMINAL PENALTY.—Whoever—

(i) files an application for adjustment of status under this section and knowingly and willfully falsifies, conceals, or covers up a material fact or makes any false, fictitious, or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious, or fraudulent statement or entry, or

(ii) creates or supplies a false writing or document for use in making such an application,

shall be fined in accordance with title 18, United States Code, or imprisoned not more than five years, or both.

(B) EXCLUSION.—An alien who is convicted of a crime under subparagraph (A) shall be considered to be inadmis-

sible to the United States on the ground described in section 212(a)(19).

(c) WAIVER OF NUMERICAL LIMITATIONS AND CERTAIN GROUNDS FOR EXCLUSION.—

(1) NUMERICAL LIMITATIONS DO NOT APPLY.—The numerical limitations of section 201 and 202 shall not apply to the adjustment of aliens to lawful permanent resident status under this section.

(2) WAIVER OF GROUNDS FOR EXCLUSION.—In the determination of an alien"s admissibility under subsection (a)(3)—

(A) GROUNDS OF EXCLUSION NOT APPLICABLE.—The provisions of paragraphs (14), (20), (21), (25), and (32) of section 212(a) shall not apply.

(B) WAIVER OF OTHER GROUNDS.—

(i) IN GENERAL.—Except as provided in clause (ii), the Attorney General may waive any other provision of section 212(a) in the case of individual aliens for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest.

(ii) GROUNDS THAT MAY NOT BE WAIVED.—The following provisions of section 212(a) may not be waived by the Attorney General under clause (i):

(I) Paragraph (9) and (10) (relating to criminals).

(II) Paragraph (15) (relating to aliens likely to become public charges).

(III) Paragraph (23) (relating to drug offenses), except for so much of such paragraph as relates to a single offense of simple possession of 30 grams or less of marihuana.

(IV) Paragraphs (27), (28), and (29) (relating to national security and members of certain organizations).

(V) Paragraph (33) (relating to those who assisted in the Nazi persecutions).

(C) SPECIAL RULE FOR DETERMINATION OF PUBLIC CHARGE.—An alien is not ineligible for adjustment of status under this section due to being inadmissible under section 212(a)(15) if the alien demonstrates a history of employment in the United States evidencing self-support without reliance on public cash assistance.

(d) TEMPORARY STAY OF EXCLUSION OR DEPORTATION AND WORK AUTHORIZATION FOR CERTAIN APPLICANTS.—

(1) BEFORE APPLICATION PERIOD.—The Attorney General shall provide that in the case of an alien who is apprehended before the beginning of the application period described in subsection (a)(1) and who can establish a nonfrivolous case of eligibility to have his status adjusted under subsection (a) (but for the fact that he may not apply for such adjustment until the beginning of such period), until the alien has had the opportunity during the first 30 days of the application period to complete the filing of an application for adjustment, the alien—

(A) may not be excluded or deported, and

(B) shall be granted authorization to engage in employment in the United States and be provided an "employment authorized" endorsement or other appropriate work permit.

(2) DURING APPLICATION PERIOD.—The Attorney General shall provide that in the case of an alien who presents a nonfrivolous application for adjustment of status under subsection (a) during the application period, and until a final determination on the application has been made in accordance with this section, the alien—

(A) may not be excluded or deported, and

(B) shall be granted authorization to engage in employment in the United States and be provided an "employment authorized" endorsement or other appropriate work permit.

(e) ADMINISTRATIVE AND JUDICIAL REVIEW.—

(1) ADMINISTRATIVE AND JUDICIAL REVIEW.—There shall be no administrative or judicial review of a determination respecting an application for adjustment of status under this section except in accordance with this subsection.

(2) ADMINISTRATIVE REVIEW.—

(A) SINGLE LEVEL OF ADMINISTRATIVE APPELLATE REVIEW.—The Attorney General shall establish an appellate authority to provide for a single level of administrative appellate review of such a determination.

(B) STANDARD FOR REVIEW.—Such administrative appellate review shall be based solely upon the administrative record established at the time of the determination on the application and upon such additional or newly discovered evidence as may not have been available at the time of the determination.

(3) JUDICIAL REVIEW.—

(A) LIMITATION TO REVIEW OF EXCLUSION OR DEPORTATION.—There shall be judicial review of such a denial only in the judicial review of an order of exclusion or deportation under section 106.

(B) STANDARD FOR JUDICIAL REVIEW.—Such judicial review shall be based solely upon the administrative record established at the time of the review by the appellate authority and the findings of fact and determinations contained in such record shall be conclusive unless the applicant can establish abuse of discretion or that the findings are directly contrary to clear and convincing facts contained in the record considered as a whole.

(f) TREATMENT OF SPECIAL AGRICULTURAL WORKERS.—For all purposes an alien whose status is adjusted under this section to that of an alien lawfully admitted for permanent residence, such status not having changed, shall be considered to be an alien lawfully admitted for permanent residence (within the meaning of section 101(a)(20)).

(g) SEASONAL AGRICULTURAL SERVICES DEFINED.—In this section, the term "seasonal agricultural services" means the performance of field work related to planting, cultural practices, cultivating, growing and harvesting of fruits and vegetables of every kind and other perishable commodities, as defined in regulations by the Secretary of Agriculture.

DETERMINATION OF AGRICULTURAL LABOR SHORTAGES AND ADMISSION OF ADDITIONAL SPECIAL AGRICULTURAL WORKERS

SEC. 210A. (a) DETERMINATION OF NEED TO ADMIT ADDITIONAL SPECIAL AGRICULTURAL WORKERS.—

(1) IN GENERAL.—Before the beginning of each fiscal year (beginning with fiscal year 1990), the Secretaries of Labor and Agriculture (in this section referred to as the "Secretaries") shall jointly determine the number (if any) of additional aliens who should be admitted to the United States or who should otherwise acquire the status of aliens lawfully admitted for permanent residence under this section during the fiscal year to meet a shortage of workers to perform seasonal agricultural services in the United States during the year. Such number is, in this section, referred to as the "shortage number".

(2) OVERALL DETERMINATION.—The shortage number is—

(A) the anticipated need for special agricultural workers (as determined under paragraph (3)) for the fiscal year, minus

(B) the supply of such workers (as determined under paragraph (4)) for that year,

divided by the factor (determined under paragraph (5)) for man-days per worker.

(3) DETERMINATION OF NEED.—For purposes of paragraph (2)(A), the anticipated need for special agricultural workers for a fiscal year is determined as follows:

(A) BASE.—The Secretaries shall jointly estimate, using statistically valid methods, the number of man-days of labor performed in seasonal agricultural services in the United States in the previous fiscal year.

(B) ADJUSTMENT FOR CROP LOSSES AND CHANGES IN INDUSTRY.—The Secretaries shall jointly—

(i) increase such number by the number of man-days of labor in seasonal agricultural services in the United States that would have been needed in the previous fiscal year to avoid any crop damage or other loss that resulted from the unavailability of labor, and

(ii) adjust such number to take into account the projected growth or contraction in the requirements for seasonal agricultural services as a result of—

(I) growth or contraction in the seasonal agriculture industry, and

(II) the use of technologies and personnel practices that affect the need for, and retention of, workers to perform such services.

(4) DETERMINATION OF SUPPLY.—For purposes of paragraph (2)(B), the anticipated supply of special agricultural workers for a fiscal year is determined as follows:

(A) BASE.—The Secretaries shall use the number estimated under paragraph (3)(A).

(B) ADJUSTMENT FOR RETIREMENTS AND INCREASED RECRUITMENT.—The Secretaries shall jointly—

(i) decrease such number by the number of man-days of labor in seasonal agricultural services in the United

States that will be lost due to retirement and movement of workers out of performance of seasonal agricultural services, and

(ii) increase such number by the number of additional man-days of labor in seasonal agricultural services in the United States that can reasonably be expected to result from the availability of able, willing, qualified, and unemployed special agricultural workers, rural low skill, or manual, laborers, and domestic agricultural workers.

(C) BASES FOR INCREASED NUMBER.—In making the adjustment under subparagraph (B)(ii), the Secretaries shall consider—

(i) the effect, if any, that improvements in wages and working conditions offered by employers will have on the availability of workers to perform seasonal agricultural services, taking into account the adverse effect, if any, of such improvements in wages and working conditions on the economic competitiveness of the perishable agricultural industry,

(ii) the effect, if any, of enhanced recruitment efforts by the employers of such workers and government employment services in the traditional and expected areas of supply of such workers, and

(iii) the number of able, willing and qualified individuals who apply for employment opportunities in seasonal agricultural services listed with offices of government employment services.

(D) CONSTRUCTION.—Nothing in this subsection shall be deemed to require any individual employer to pay any specified level of wages, to provide any specified working conditions, or to provide for any specified recruitment of workers.

(5) DETERMINATION OF MAN-DAY PER WORKER FACTOR.—

(A) FISCAL YEAR 1990.—For fiscal year 1990—

(i) IN GENERAL.—Subject to clause (ii), for purposes of paragraph (2) the factor under this paragraph is the average number, as determined by the Director of the Bureau of the Census under subsection (b)(3)(A)(ii), of man-days of seasonal agricultural services performed in the United States in fiscal year 1989 by special agricultural workers whose status is adjusted under section 210 and who performed seasonal agricultural services in the United States at any time during the fiscal year.

(ii) LACK OF ADEQUATE INFORMATION.—If the Director determines that—

(I) the information reported under subsection (b)(2)(A) is not adequate to make a reasonable determination of the average number described in clause (i), but

(II) the inadequacy of the information is not due to the refusal or failure of employers to report the information required under subsection (b)(2)(A),

the factor under this paragraph is 80.

(B) FISCAL YEAR 1991.—For purposes of paragraph (2) for fiscal year 1991, the factor under this paragraph is the average number, as determined by the Director of the Bureau of the Census under subsection (b)(3)(A)(ii), of man-days of seasonal agricultural services performed in the United States in fiscal year 1990 by special agricultural workers who obtained lawful permanent resident status under this section.

(C) FISCAL YEAR 1992 AND THEREAFTER.—For purposes of paragraph (2) for fiscal year 1992 and each fiscal year thereafter, the factor under this paragraph is the average number, as determined by the Director of the Bureau of the Census under subsection (b)(3)(A)(ii), of man-days of seasonal agricultural services performed in the United States in each of the two previous fiscal years by special agricultural workers who obtained lawful permanent resident status under this section during either of such fiscal years.

(6) EMERGENCY PROCEDURE FOR INCREASE IN SHORTAGE NUMBER.—

(A) REQUESTS.—After the beginning of a fiscal year, a group or association representing employers (and potential employers) of individuals who perform seasonal agricultural services may request the Secretaries to increase the shortage number for the fiscal year based upon a showing that extraordinary, unusual, and unforeseen circumstances have resulted in a significant increase in the shortage number due to (i) a significant increase in the need for special agricultural workers in the year, (ii) a significant decrease in the availability of able, willing, and qualified workers to perform seasonal agricultural services, or (iii) a significant decrease (below the factor used for purposes of paragraph (5)) in the number of man-days of seasonal agricultural services performed by aliens who were recently admitted (or whose status was recently adjusted) under this section.

(B) NOTICE OF EMERGENCY PROCEDURE.—Not later than 3 days after the date the Secretaries receive a request under subparagraph (A), the Secretaries shall provide for notice in the Federal Register of the substance of the request and shall provide an opportunity for interested parties to submit information to the Secretaries on a timely basis respecting the request.

(C) PROMPT DETERMINATION ON REQUEST.—The Secretaries, not later than 21 days after the date of the receipt of such a request and after consideration of any information submitted on a timely basis with respect to the request, shall make and publish in the Federal Register their determination on the request. The request shall be granted, and the shortage number for the fiscal year shall be increased, to the extent that the Secretaries determined that such an increase is justified based upon the showing and circumstances described in subparagraph (A) and that such an increase takes into account reasonable recruitment efforts having been undertaken.

(7) PROCEDURE FOR DECREASING MAN-DAYS OF SEASONAL AGRICULTURAL SERVICES REQUIRED IN THE CASE OF OVER-SUPPLY OF WORKERS.—

(A) REQUESTS.—After the beginning of a fiscal year, a group of special agricultural workers may request the Secretaries to decrease the number of man-days required under subparagraphs (A) and (B) of subsection (d)(2) with respect to the fiscal year based upon a showing that extraordinary, unusual, and unforeseen circumstances have resulted in a significant decrease in the shortage number due to (i) a significant decrease in the need for special agricultural workers in the year, (ii) a significant increase in the availability of able, willing, and qualified workers to perform seasonal agricultural services, or (iii) a significant increase (above the factor used for purposes of paragraph (5)) in the number of man-days of seasonal agricultural services performed by aliens who were recently admitted (or whose status was recently adjusted) under this section.

(B) NOTICE OF REQUEST.—Not later than 3 days after the date the Secretaries receive a request under subparagraph (A), the Secretaries shall provide for notice in the Federal Register of the substance of the request and shall provide an opportunity for interested parties to submit information to the Secretaries on a timely basis respecting the request.

(C) DETERMINATION ON REQUEST.—The Secretaries, before the end of the fiscal year involved and after consideration of any information submitted on a timely basis with respect to the request, shall make and publish in the Federal Register their determination on the request The request shall be granted, and the number of man-days specified in subparagraphs (A) and (B) of subsection (d)(2) for the fiscal year shall be reduced by the same proportion as the Secretaries determine that a decrease in the shortage number is justified based upon the showing and circumstances described in subparagraph (A).

(b) NUMERICAL LIMITATION ON ADMISSION OF ADDITIONAL SPECIAL AGRICULTURAL WORKERS.—

(1) NUMERICAL LIMITATION.—

(A) FISCAL YEAR 1990.—The numerical limitation on the number of aliens who may be admitted under subsection (c)(1) or who otherwise may acquire lawful permanent residence under such subsection for fiscal year 1990 is—

(i) 95 percent of the number of individuals whose status was adjusted under section 210(a), minus

(ii) the number determined under paragraph (3)(A) for fiscal year 1989 (as adjusted in accordance with subparagraph (D)).

(B) FISCAL YEARS 1991, 1992, 1993, & 1994.—The numerical limitation on the number of aliens who may be admitted under subsection (c)(1) or who otherwise may acquire lawful permanent residence under such subsection for fiscal year 1991, 1992, 1993, or 1994, is—

(i) 90 percent of the number described in this clause for the previous fiscal year (or, for fiscal year 1991, the number described in subparagraph (A)(i)), minus

(ii) the number determined under paragraph (3)(A) for the previous fiscal year (as adjusted in accordance with subparagraph (D)).

(C) FISCAL YEARS AFTER 1994.—The numerical limitation on the number of aliens who may be admitted under subsection (c)(1) or who otherwise may acquire lawful permanent residence under such subsection for a fiscal year after fiscal year 1994 is—

(i) 95 percent of the number described in this clause for the previous fisal year (or, for fiscal year 1995, the number described in subparagraph (B)(i)), minus

(ii) the number determined under paragraph (3)(A)(i) for the previous fiscal year (as adjusted in accordance with subparagraph (D)).

(D) ADJUSTMENT TO TAKE INTO ACCOUNT CHANGE IN NUMBER OF H-2 AGRICULTURAL WORKERS.—The number used under subparagraph (A)(ii), (B)(ii), or (C)(ii) (as the case may be) shall be increased or decreased to reflect any numerical increase or decrease, respectively, in the number of aliens admitted to perform temporary seasonal agricultural services (as defined in subsection (f)(2)) under section 101(a)(15)(H)(ii)(a) in the fiscal year compared to such number in the previous fiscal year.

(2) REPORTING OF INFORMATION ON EMPLOYMENT.—In the case of a person or entity who employs, during a fiscal year in seasonal agricultural services. a special agricultural worker—

(A) whose status was adjusted under section 210, the person or entity shall furnish the Director of the Bureau of the Census with a certificate (at a time and in a form approved by the Attorney General) of the number of man-days of employment performed by the alien in seasonal agricultural services during the fiscal year, or

(B) who was admitted or whose status was adjusted under this section, the person or entity shall furnish the alien and the Director with a certificate (at a time and in a form approved by the Attorney General) of the number of man-days of employment performed by the alien in seasonal agricultural services during the fiscal year.

(3) ANNUAL DETERMINATION OF EMPLOYMENT OF SPECIAL AGRICULTURAL WORKERS.—

(A) IN GENERAL.—The Director of the Bureau of the Census shall, before the end of each fiscal year (beginning with fiscal year 1989), determine—

(i) the number of special agricultural workers who have performed seasonal agricultural services in the United States at any time during the fiscal year, and

(ii) for purposes of subsection (a)(5), the average number of man-days of such services certain of such workers have performed in the United States during the fiscal year.

(B) BASIS FOR DETERMINATIONS.—Subject to subparagraph (C), such determinations shall be based on the certifications furnished to the Director under paragraph (2).

(C) ADJUSTMENT FOR UNDERREPORTING AND DUPLICATE REPORTING.—The Director shall adjust the number otherwise determined so as to take into account the underreporting or duplicate reporting of special agricultural workers who have performed seasonal agricultural services at any time during the fiscal year. The Director shall periodically conduct appropriate surveys, of agricultural employers and others, to ascertain the extent of such underreporting or duplicate reporting.

(c) ADMISSION OF ADDITIONAL SPECIAL AGRICULTURAL WORKERS.—

(1) IN GENERAL.—Notwithstanding the numerical limitations under section 201 or the provisions of sections 202, 203, or 204, the number of aliens who may be issued visas or who otherwise may acquire the status of an alien lawfully admitted for permanent residence under this section in a fiscal year is equal to the shortage number (determined under subsection (a)) for the fiscal year, or, if less, the numerical limitation established under subsection (b)(1) for the fiscal year.

(2) ALLOCATION OF VISAS.—The Attorney General shall, in consultation with the Secretary of State, provide such process as may be appropriate for aliens to petition for immigrant visas or to adjust status to become aliens lawfully admitted for permanent residence under this subsection. Such process shall provide special consideration for aliens who have been continuously residing in the United States since May 1, 1986. No alien may be issued a visa as an alien to be admitted under this subsection or may have the alien's status adjusted under this subsection unless the alien has had a petition approved under this paragraph.

(d) RIGHTS OF ALIENS ADMITTED OR ADJUSTED UNDER THIS SECTION.—

(1) IN GENERAL.—Except as otherwise provided in this subsection, an alien who acquires the status of an alien lawfully admitted for permanent residence under subsection (c), such status not having changed, is considered to be an alien lawfully admitted for permanent residence (as described in section 101(a)(20)).

(2) EMPLOYMENT IN SEASONAL AGRICULTURAL SERVICES REQUITED.—

(A) FOR 2 YEARS TO AVOID DEPORTATION.—In order to meet the requirement of this paragraph (for purposes of section 241(a)(20)), an alien, who has obtained the status of an alien lawfully admitted for permanent residence under this section, must establish to the Attorney General that the alien has performed 60 man-days of seasonal agricultural services—

(i) during the one-year period beginning on the date the alien obtained such status, and

(ii) during the one-year period beginning one year after the date the alien obtained such status.

(B) FOR 5 YEARS FOR NATURALIZATION.—Notwithstanding any provision in title III, an alien admitted under this section may not be naturalized as a citizen of the United States under that title unless the alien has performed 60 man-days of seasonal agricultural services in each of 5 fiscal years (not including any fiscal year before the fiscal year in which the alien was admitted under this section).

(C) PROOF.—In meeting the requirements of subparagraphs (A) and (B), an alien may submit such documentation as may be submitted under section 210(b)(3).

(D) ADJUSTMENT OF NUMBER OF MAN-DAYS REQUIRED.—The number of man-days specified in subparagraphs (A) and (B) are subject to adjustment under subsection (a)(7).

(e) TERMS OF EMPLOYMENT RESPECTING ALIENS ADMITTED UNDER THIS SECTION.—

(1) EQUAL TRANSPORTATION FOR DOMESTIC WORKERS.—If a person employs an alien, who was admitted or whose status is adjusted under subsection (c), in the performance of seasonal agricultural services and provides transportation arrangements or assistance for such workers, the employer must provide the same transportation arrangements or assistance (generally comparable in expense and scope) for other individuals employed in the performance of seasonal agricultural services.

(2) PROHIBITION OF FALSE INFORMATION BY CERTAIN EMPLOYERS.—A farm labor contractor, agricultural employer, or agricultural association who is an exempt person (as defined in paragraph (5)) shall not knowingly provide false or misleading information to an alien who was admitted or whose status was adjusted under subsection (c) concerning the terms, conditions, or existence of agricultural employment (described in subsection (a), (b), or (c) of section 301 of MASAWPA).

(3) PROHIBITION OF DISCRIMINATION BY CERTAIN EMPLOYERS.—In the case of an exempt person and with respect to aliens who have been admitted or whose status has been adjusted under subsection (c), the provisions of section 505 of MASAWPA shall apply to any proceeding under or related to (and rights and protections afforded by) this section in the same manner as they apply to proceedings under or related to (and rights and protections afforded by) MASAWPA.

(4) ENFORCEMENT.—If a person or entity—

(A) fails to furnish a certificate required under subsection (b)(2) or furnishes false statement of a material fact in such a certificate,

(B) violates paragraph (1) or (2), or

(C) violates the provisions of section 505(a) of MASAWPA (as they apply under paragraph (3)),

the person or entity is subject to a civil money penalty under section 503 of MASAWPA in the same manner as if the person or entity had committed a violation of MASAWPA.

(5) SPECIAL DEFINITIONS.—In this subsection:

(A) MASAWPA.—The term "MASAWPA" means the Migrant and Seasonal Agricultural Worker Protection Act (Public Law 97-470).

(B) The term "exempt person" means a person or entity who would be subject to the provisions of MASAWPA but for paragraph (1) or (2), or both, of section 4(a) of MASAWPA.

(f) GENERAL DEFINITIONS.—In this section:

(1) The term "special agricultural worker" means an individual, regardless of present status, whose status was at any time adjusted under section 210 or who at any time was admitted or had the individual's status adjusted under subsection (c).

(2) The term "seasonal agricultural services" has the meaning given such term in section 210(g).

(3) The term "Director" refers to the Director of the Bureau of the Census.

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CHAPTER 2—QUALIFICATIONS FOR ADMISSION OF ALIENS; TRAVEL CONTROL OF CITIZENS AND ALIENS

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GENERAL CLASSES OF ALIENS INELIGIBLE TO RECEIVE VISAS AND EXCLUDED FROM ADMISSION; WAIVERS OF INADMISSIBILITY

SEC. 212. (a) * * *

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(e)*(1)* No person *(A)* admitted under section 101(a)(15)(J) or acquiring such status after admission (i) whose participation in the program for which he came to the United States was financed in whole or in part, directly or indirectly, by an agency of the Government of the United States or by the government of the country of his nationality or his last residence, (ii) who at the time of admission or acquisition of status under section 101(a)(15)(J) was a national or resident of a country which the Secretary of State pursuant to regulations prescribed by him, had designated as clearly requiring the services of persons engaged in the field of specialized knowledge or skill in which the alien was engaged, or (iii) who came to the United States or acquired such status in order to receive graduate medical education or training, *or (B) except as provided in paragraph (2), admitted under subparagraph (F) or (M) of section 101(a)(15) or acquiring such status after admission,* shall be eligible to apply for an immigrant visa, or for permanent residence, or for a nonimmigrant visa under section 101(a)(15)(H) or section 101(a)(15)(L) until it is established that such person has resided and been physically present in the country of his nationality or his last residence for an aggregate of at least two years following departure from the United States[: *Provided,* That upon].

(2) Upon the favorable recommendation of the Secretary of State, pursuant to the request of an interested United States Government agency, or of the Commissioner of Immigration and Naturalization after he has determined that departure from the United States would impose exceptional hardship upon the alien's spouse or child (if such spouse or child is a citizen of the United States or a lawfully resident alien), or that the alien cannot return to the country of his nationality or last residence because he would be subject to per-

secution on account of race, religion, or political opinion, the Attorney General may waive the requirement of such two-year foreign residence abroad in the case of any alien whose admission to the United States is found by the Attorney General to be in the public interest[: *And provided further,* That, except].

(3) Except in the case of an alien described in [clause (iii),] *clause (A)(iii) or clause (B) of the first sentence,* the Attorney General may, upon the favorable recommendation of the Secretary of State, waive such two-year foreign residence requirement in any case in which the foreign country of the alien's nationality or last residence has furnished the Secretary of State a statement in writing that it has no objection to such waiver in the case of such alien.

(4) The Attorney General may waive such two-year foreign residence requirement in the case of an alien described in clause (B) of paragraph (1) who is an immediate relative (as specified in section 201(b)).

(5) The Attorney General, in the case of an alien described in clause (B) of paragraph (1) who has the status of a nonimmigrant under section 101(a)(15)(F), may waiver such two-year foreign residence requirement if the Attorney General determines that the waiver is in the public interest and that the alien—

(A) is applying for a visa as an immigrant described in paragraph (3) or (6) of section 203(a) and meets the requirements of paragraph (6), or

(B) is applying for a visa as a nonimmigrant described in section 101(a)(15)(H)(iii) and meets the requirements of paragraph (7).

(6) An alien meets the requirements of this paragraph if the alien—

(A) is admitted to the United States under section 101(a)(15)(F) before October 1, 1992, and

(B) has obtained—

(i) has obtained an advanced degree from a college or university in the United States and has been offered a position on the faculty (including as a researcher) of a college or university in the United States in the field in which he obtained the degree,

(ii) a degree in a natural science, mathematics, computer science, or an engineering field from a college or university in the United States and has been offered a research, business, or technical position by a employer in the field in which he obtained the degree, or

(iii) an advanced degree in business or economics from a college or university in the United States, has exceptional ability in business or economics, and has been offered a research, business, or technical position by a United States employer which requires such exceptional ability,

and has received a certification under section 212(a)(14) with respect to the position.

(7) An alien meets the requirements of this paragraph if the alien—

(A) has obtained a degree in a natural science, mathematics, computer science, or an engineering or business field;

(B) will receive no more than four years of training by a firm, corporation, or other legal entity in the United States, which training will enable the alien to return to the country of his nationality or last residence and be employed there as a manager by the same firm, corporation, or other legal entity, or a branch, subsidiary, or affiliate thereof; and

(C) furnishes the Attorney General each year with an affidavit (in such form as the Attorney General shall prescribe) that attests that the alien (i) is in good standing in the training program in which the alien is participating, and (ii) will return to the country of his nationality or last residence upon completion of the training program.

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ADMISSION OF NONIMMIGRANTS

SEC. 214. (a) The admission to the United States of any alien as a nonimmigrant shall be for such time and under such conditions as the Attorney General may be regulations prescribe, including when he deems necessary the giving of a bond with sufficient surety in such sum and containing such conditions as the Attorney General shall prescribe, to insure that at the expiration of such time or upon failure to maintain the status under which he was admitted, or to maintain any status subsequently acquired under section 248, such alien will depart from the United States. No alien admitted to Guam without a visa pursuant to section 212(l) may be authorized to enter or stay in the United States other than in Guam or to remain in Guam for a period exceeding fifteen days from date of admission to Guam. *No alien admitted to the United States without a visa pursuant to section 217 may be authorized to remain in the United States as a nonimmigrant visitor for a period exceeding 90 days from the date of admission.*

* * * * * * *

(c) The question of importing any alien as a nonimmigrant under section 101(a)(15)(H) or (L) in any specific case or specific cases shall be determined by the Attorney General, after consultation with appropriate agencies of the Government, upon petition of the importing employer. Such petition shall be made and approved before the visa is granted. The petition shall be in such form and contain such information as the Attorney General shall prescribe. The approval of such a petition shall not, of itself, be construed as establishing that the alien is a nonimmigrant. *For purposes of this subsection with respect to nonimmigrants described in section 101(a)(15)(H)(ii)(a), the term "appropriate agencies of Government" means the Department of Labor and includes the Department of Agriculture. The provisions of section 216 shall apply to the question of importing any alien as a nonimmigrant under section 101(a)(15)(H)(ii)(a).*

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ADMISSION OF TEMPORARY H-2A WORKERS

SEC. 216. (a) CONDITIONS FOR APPROVAL OF H-2A PETITIONS.—(1) A petition to import an alien as an H-2A worker (as defined in subsection (i)(2)) may not be approved by the Attorney General unless the petitioner has applied to the Secretary of Labor for a certification that—

(A) there are not sufficient workers who are able, willing, and qualified, and who will be available at the time and place needed, to perform the labor or services involved in the petition, and

(B) the employment of the alien in such labor or services will not adversely affect the wages and working conditions of workers in the United States similarly employed.

(2) The Secretary of Labor may require by regulation, as a condition of issuing the certification, the payment of a fee to recover the reasonable costs of processing applications for certification.

(b) CONDITIONS FOR DENIAL OF LABOR CERTIFICATION.—The Secretary of Labor may not issue a certification under subsection (a) with respect to an employer if the conditions described in that subsection are not met or if any of the following conditions are met:

(1) There is a strike or lockout in the course of a labor dispute which, under the regulations, precludes such certification.

(2)(A) The employer during the previous two-year period employed H-2A workers and the Secretary of Labor has determined, after notice and opportunity for a hearing, that the employer at any time during that period substantially violated a material term or condition of the labor certification with respect to the employment of domestic or nonimmigrant workers.

(B) No employer may be denied certification under subparagraph (A) for more than three years for any violation described in such subparagraph.

(3) The employer has not provided the Secretary with satisfactory assurances that if the employment for which the certification is sought is not covered by State workers' compensation law, the employer will provide, at no cost to the worker, insurance covering injury and disease arising out of and in the course of the worker's employment which will provide benefits at least equal to those provided under the State workers' compensation law for comparable employment.

(4) The Secretary determines that the employer has not made positive recruitment efforts within a multistate region of traditional or expected labor supply where the Secretary finds that there are a significant number of qualified United States workers who, if recruited, would be willing to make themselves available for work at the time and place needed. Positive recruitment under this paragraph is in addition to, and shall be conducted within the same time period as, the circulation through the interstate employment service system of the employer's job offer. The obligation to engage in positive recruitment under this paragraph shall terminate on the date the H-2A workers depart for the employer's place of employment.

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(c) SPECIAL RULES FOR CONSIDERATION OF APPLICATIONS.—The following rules shall apply in the case of the filing and consideration of an application for a labor certification under this section:

(1) DEADLINE FOR FILING APPLICATIONS.—The Secretary of Labor may not require that the application be filed more than 60 days before the first date the employer requires the labor or services of the H–2A worker.

(2) NOTICE WITHIN SEVEN DAYS OF DEFICIENCIES.—(A) The employer shall be notified in writing within seven days of the date of filing if the application does not meet the standards (other than that described in subsection (a)(1)(A)) for approval.

(B) If the application does not meet such standards, the notice shall include the reasons therefor and the Secretary shall provide an opportunity for the prompt resubmission of a modified application.

(3) ISSUANCE OF CERTIFICATION.—(A) The Secretary of Labor shall make, not later than 20 days before the date such labor or services are first required to be performed, the certification described in subsection (a)(1) if—

(i) the employer has complied with the criteria for certification (including criteria for the recruitment of eligible individuals as prescribed by the Secretary), and

(ii) the employer does not actually have, or has not been provided with referrals of, qualified eligible individuals who have indicated their availability to perform such labor or services on the terms and conditions of a job offer which meets the requirements of the Secretary.

In considering the question of whether a specific qualification is appropriate in a job offer, the Secretary shall apply the normal and accepted qualifications required by non-H-2A-employers in the same or comparable occupations and crops.

(B)(i) For a period of 3 years subsequent to the effective date of this section, labor certifications shall remain effective only if, from the time the foreign worker departs for the employer's place of employment, the employer will provide employment to any qualified United States worker who applies to the employer until 50 percent of the period of the work contract, under which the foreign worker who is in the job was hired, has elapsed. In addition, the employer will offer to provide benefits, wages and working conditions required pursuant to this section and regulations.

(ii) The requirement of clause (i) shall not apply to any employer who—

(I) did not, during any calendar quarter during the preceding calendar year, use more than 500 man-days of agricultural labor, as defined in section 3(u) of the Fair Labor Standards Act of 1938 (29 U.S.C. 203(u)),

(II) is not a member of an association which has petitioned for certification under this section for its members, and

(III) has not otherwise associated with other employers who are petitioning for temporary foreign workers under this section.

(iii) Six months before the end of the 3-year period described in clause (i) the Secretary of Labor shall consider the findings of the report mandated by section 403(a)(4)(D) of the Immigration Control and Legalization Amendments Act of 1986 as well as other relevant materials, including evidence of benefits to United States workers and costs to employers, addressing the advisability of continuing a policy which requires an employer, as a condition for certification under this section, to continue to accept qualified, eligible United States workers for employment after the date the H-2A workers depart for work with the employer. The Secretary"s review of such findings and materials shall lead to the issuance of findings in furtherance of the Congressional policy that aliens not be admitted under this section unless there are not sufficient workers in the United States who are able, willing, and qualified to perform the labor or service needed and that the employment of the aliens in such labor or services will not adversely affect the wages and working conditions of workers in the United States similarly employed. In the absence of the enactment of Federal legislation prior to three months before the end of the 3-year period described in clause (i) which addresses the subject matter of this subparagraph, the Secretary shall immediately publish the findings required by this clause, and shall promulgate, on an interim or final basis, regulations based on his findings which shall be effective no later than three years from the effective date of this section.

(iv) In complying with clause (i) of this subparagraph, an association shall be allowed to refer or transfer workers among its members: Provided, That for purposes of this section an association acting as an agent for its members shall not be considered a joint employer merely because of such referral or transfer.

(v) United States workers referred or transferred pursuant to clause (iv) of this subparagraph shall not be treated disparately.

(vi) An employer shall not be liable for payments under section 655.202(b)(6) of title 20, Code of Federal Regulations (or any successor regulation) with respect to an H-2A worker who is displaced due to compliance with the requirement of this subparagraph, if the Secretary of Labor certifies that the H-2A worker was displaced because of the employer's compliance with clause (i) of this subparagraph.

(vii)(I) No person or entity shall willfully and knowingly withhold domestic workers prior to the arrival of H-2A workers in order to force the hiring of domestic workers under clause (i).

(II) Upon the receipt of a complaint by an employer that a violation of subclause (I) has occurred the Secretary shall immediately investigate. He shall within 36 hours of the receipt of the complaint issue findings concerning the alleged violation. Where the Secretary finds that a violation has occurred, he shall immediately suspend the application of clause (i) of this subparagraph with respect to that certification for that date of need.

(4) HOUSING.—Employers shall furnish housing in accordance with regulations. The employer shall be permitted at the employer"s option to provide housing meeting applicable Federal standards for temporary labor camps or to secure housing

which meets the local standards for rental and/or public accommodations or other substantially similar class of habitation: Provided, That in the absence of applicable local standards, State standards for rental and/or public accommodations or other substantially similar class of habitation shall be met: Provided further, That in the absence of applicable local or State standards, Federal temporary labor camp standards shall apply: Provided further, That the Secretary of Labor shall issue regulations which address the specific requirements of housing for employees principally engaged in the range production of livestock: Provided further, That when it is the prevailing practice in the area and occupation of intended employment to provide family housing, family housing shall be provided to workers with families who request it: And provided further, That nothing in this paragraph shall require an employer to provide or secure housing for workers who are not entitled to it under the temporary labor certification regulations in effect on June 1, 1986.

(d) ROLES OF AGRICULTURAL ASSOCIATIONS.—

(1) PERMITTING FILING BY AGRICULTURAL ASSOCIATIONS.—A petition to import an alien as a temporary agricultural worker, and an application for a labor certification with respect to such a worker, may be filed by an association of agricultural producers which use agricultural services.

(2) TREATMENT OF ASSOCIATIONS ACTING AS EMPLOYERS.—If an association is a joint or sole employer of temporary agricultural workers, the certifications granted under this section to the association may be used for the certified job opportunities of any of its producer members and such workers may be transferred among its producer members to perform agricultural services of a temporary or seasonal nature for which the certifications were granted.

(3) TREATMENT OF VIOLATIONS.—

(A) MEMBER'S VIOLATION DOES NOT NECESSARILY DISQUALIFY ASSOCIATION OR OTHER MEMBERS.—If an individual producer member of a joint employer association is determined to have committed an act that under subsection (b)(2) results in the denial of certification with respect to the member, the denial shall apply only to that member of the association unless the Secretary determines that the association or other member participated in, had knowledge of, or reason to know of, the violation.

(B) ASSOCIATION'S VIOLATION DOES NOT NECESSARILY DISQUALIFY MEMBERS.—(i) If an association representing agricultural producers as a joint employer is determined to have committed an act that under subsection (b)(2) results in the denial of certification with respect to the association, the denial shall apply only to the association and does not apply to any individual producer member of the association unless the Secretary determines that the member participated in, had knowledge of, or reason to know of, the violation.

(ii) If an association of agricultural producers certified as a sole employer is determined to have committed an act

that under subsection (b)(2) results in the denial of certification with respect to the association, no individual producer member of such association may be the beneficiary of the services of temporary alien agricultural workers admitted under this section in the commodity and occupation in which such aliens were employed by the association which was denied certification during the period such denial is in force, unless such producer member employs such aliens in the commodity and occupation in question directly or through an association which is a joint employer of such workers with the producer member.

(e) EXPEDITED ADMINISTRATIVE APPEALS OF CERTAIN DETERMINATIONS.—(1) Regulations shall provide for an expedited procedure for the review of a denial of certification under subsection (a)(1) or a revocation of such a certification or, at the applicant's request, for a de novo administrative hearing respecting the denial or revocation.

(2) The Secretary of Labor shall expeditiously, but in no case later than 72 hours after the time a new determination is requested, make a new determination on the request for certification in the case of an H-2A worker if able, willing, and qualified eligible individuals are not actually available at the time such labor or services are required and a certification was denied in whole or in part because of the availability of qualified workers. If the employer asserts that any eligible individual who has been referred is not able, willing, or qualified, the burden of proof is on the employer to establish that the individual referred is not able, willing, or qualified because of employment-related reasons.

(f) VIOLATORS DISQUALIFIED FOR 5 YEARS.—An alien may not be admitted to the United States as a temporary agricultural worker if the alien was admitted to the United States as such a worker within the previous five-year period and the alien during that period violated a term or condition of such previous admission.

(g) AUTHORIZATIONS OF APPROPRIATIONS.—(1) There are authorized to be appropriated for each fiscal year, beginning with fiscal year 1987, $10,000,000 for the purposes—

(A) of recruiting domestic workers for temporary labor and services which might otherwise be performed by nonimmigrants described in section 101(a)(15)(H)(ii)(a), and

(B) of monitoring terms and conditions under which such nonimmigrants (and domestic workers employed by the same employers) are employed in the United States.

(2) The Secretary of Labor is authorized to take such actions, including imposing appropriate penalties and seeking appropriate injunctive relief and specific performance of contractual obligations, as may be necessary to assure employer compliance with terms and conditions of employment under this section.

(3) There are authorized to be appropriated for each fiscal year, beginning with fiscal year 1987, such sums as may be necessary for the purpose of enabling the Secretary of Labor to make determinations and certifications under this section and under section 212(a)(14).

(4) There are authorized to be appropriated for each fiscal year, beginning with fiscal year 1987, such sums as may be necessary for

the purposes of enabling the Secretary of Agriculture to carry out the Secretary's duties and responsibilities under this section.

(h) MISCELLANEOUS PROVISIONS.—(1) The Attorney General shall provide for such endorsement of entry and exit documents of nonimmigrants described in section 101(a)(15)(H)(ii) as may be necessary to carry out this section and to provide notice for purposes of section 274A.

(2) The provisions of subsections (a) and (c) of section 214 and the provisions of this section preempt any State or local law regulating admissibility of nonimmigrant workers.

(i) DEFINITIONS.—For purposes of this section:

(1) The term "eligible individual" means, with respect to employment, an individual who is not an unauthorized alien (as defined in section 274A(g)) with respect to that employment.

(2) The term "H-2A worker" means a nonimmigrant described in section 101(a)(15)(H)(ii)(a).

VISA WAIVER PILOT PROGRAM FOR CERTAIN VISITORS

SEC. 217. (a) ESTABLISHMENT OF PILOT PROGRAM.—The Attorney General and the Secretary of State are authorized to establish a pilot program (hereafter in this section referred to as the "pilot program") under which the requirement of paragraph (26)(B) of section 212(a) may be waived by the Attorney General and the Secretary of State, acting jointly and in accordance with this section, in the case of an alien who meets the following requirements:

(1) SEEKING ENTRY AS TOURIST FOR 90 DAYS OR LESS.—The alien is applying for admission during the pilot program period (as defined in subsection (e)) as a nonimmigrant visitor (described in section 101(a)(15)(B)) for a period not exceeding 90 days.

(2) NATIONAL OF PILOT PROGRAM COUNTRY.—The alien is a national of a country which—

(A) extends (or agrees to extend) reciprocal privileges to citizens and nationals of the United States, and

(B) is designated as a pilot program country under subsection (c).

(3) EXECUTES ENTRY CONTROL AND WAIVER FORMS.—The alien before the time of such admission—

(A) completes such immigration form as the Attorney General shall establish under subsection (b)(3), and

(B) executes a waiver of review and appeal described in subsection (b)(4).

(4) ROUND-TRIP TICKET.—The alien has a round-trip, nontransferable transportation ticket which—

(A) is valid for a period of not less than one year,

(B) is nonrefundable except in the country in which issued or in the country of the alien's nationality or residence,

(C) is issued by a carrier which has entered into an agreement described in subsection (d), and

(D) guarantees transport of the alien out of the United States at the end of the alien's visit.

(5) NOT A SAFETY THREAT.—The alien has been determined not to represent a threat to the welfare, health, safety, or security of the United States.

(6) NO PREVIOUS VIOLATION.—If the alien previously was admitted without a visa under this section, the alien must not have failed to comply with the conditions of any previous admission as such a nonimmigrant.

(b) CONDITIONS BEFORE PILOT PROGRAM CAN BE PUT INTO OPERATION.—

(1) PRIOR NOTICE TO CONGRESS.—The pilot program may not be put into operation until the end of the 30-day period beginning on the date that the Attorney General submits to the Congress a certification that the screening and monitoring system described in paragraph (2) is operational and effective and that the form described in paragraph (3) has been produced.

(2) AUTOMATED DATA ARRIVAL AND DEPARTURE SYSTEM.—The Attorney General in cooperation with the Secretary of State shall develop and establish an automated data arrival and departure control system to screen and monitor the arrival into and departure from the United States of nonimmigrant visitors receivi::g a visa waiver under the pilot program.

(3) VISA WAIVER INFORMATION FORM.—The Attorney General shall develop a form for use under the pilot program. Such form shall be consistent and compatible with the control system developed under paragraph (2). Such form shall provide for, among other items—

(A) a summary description of the conditions for excluding nonimmigrant visitors from the United States under section 212(a) and under the pilot program,

(B) a description of the conditions of entry with a waiver under the pilot program, including the limitation of such entry to 90 days and the consequences of failure to abide by such conditions, and

(C) questions for the alien to answer concerning any previous denial of the alien's application for a visa.

(4) WAIVER OF RIGHTS.—An alien may not be provided a waiver under the pilot program unless the alien has waived any right—

(A) to review or appeal under this Act of an immigration officer's determination as to the admissibility of the alien at the port of entry into the United States, or

(B) to contest, other than on the basis of an application for asylum, any action for deportation against the alien.

(c) DESIGNATION OF PILOT PROGRAM COUNTRIES.—

(1) UP TO 8 COUNTRIES.—The Attorney General and the Secretary of State acting jointly may designate up to eight countries as pilot program countries for purposes of the pilot program.

(2) INITIAL QUALIFICATIONS.—For the initial period described in paragraph (4), a country may not be designated as a pilot program country unless the following requirements are met:

(A) LOW NONIMMIGRANT VISA REFUSAL RATE FOR FREVIOUS 2-YEAR PERIOD.—The average number of refusals of nonimmigrant visitor visas for nationals of that country during the two previous full fiscal years was less than 2.0

percent of the total number of nonimmigrant visitor visas for nationals of that country which were granted or refused during those years.

(B) LOW NONIMMIGRANT VISA REFUSAL RATE FOR EACH OF 2 PREVIOUS YEARS.—The average number of refusals of nonimmigrant visitor visas for nationals of that country during either of such two previous full fiscal years was less than 2.5 percent of the total number of nonimmigrant visitor visas for nationals of that country which were granted or refused during that year.

(3) CONTINUING AND SUBSEQUENT QUALIFICATIONS.—For each fiscal year (within the pilot program period) after the initial period—

(A) CONTINUING QUALIFICATION.—In the case of a country which was a pilot program country in the previous fiscal year, a country may not be designated as a pilot program country unless the sum of—

(i) the total of the number of nationals of that country who were excluded from admission or withdrew their application for admission during such previous fiscal year as a nonimmigrant visitor, and

(ii) the total number of nationals of that country who were admitted as nonimmigrant visitors during such previous fiscal year and who violated the terms of such admission,

was less than 2 percent of the total number of nationals of that country who applied for admission as nonimmigrant visitors during such previous fiscal year.

(B) NEW COUNTRIES.—In the case of another country, the country may not be designated as a pilot program country unless the following requirements are met:

(i) LOW NONIMMIGRANT VISA REFUSAL RATE IN PREVIOUS 2-YEAR PERIOD.—The average number of refusals of nonimmigrant visitor visas for nationals of that country during the two previous full fiscal years was less than 2 percent of the total number of nonimmigrant visitor visas for nationals of that country which were granted or refused during those years.

(ii) LOW NONIMMIGRANT VISA REFUSAL RATE IN EACH OF THE 2 PREVIOUS YEARS.—The average number of refusals of nonimmigrant visitor visas for nationals of that country during either of such two previous full fiscal years was less than 2.5 percent of the total number of nonimmigrant visitor visas for nationals of that country which were granted or refused during that year.

(4) INITIAL PERIOD.—For purposes of paragraphs (2) and (3), the term "initial period" means the period beginning at the end of the 30-day period described in subsection (b)(1) and ending on the last day of the first fiscal year which begins after such 30-day period.

(d) CARRIER AGREEMENTS.—

(1) IN GENERAL.—The agreement referred to in subsection (a)(4)(C) is an agreement between a carrier and the Attorney

General under which the carrier agrees, in consideration of the waiver of the visa requirement with respect to a nonimmigrant visitor under the pilot program—

(A) to indemnify the United States against any costs for the transportation of the alien from the United States if the visitor is refused admission to the United States or remains in the United States unlawfully after the 90-day period described in subsection (a)(1)(A), and

(B) to submit daily to immigration officers any immigration forms received with respect to nonimmigrant visitors provided a waiver under the pilot program.

(2) TERMINATION OF AGREEMENTS.—The Attorney General may terminate an agreement under paragraph (1) with five days' notice to the carrier for the carrier's failure to meet the terms of such agreement.

(e) DEFINITION OF PILOT PROGRAM PERIOD.—For purposes of this section, the term "pilot program period" means the period beginning at the end of the 30-day period referred to in subsection (b)(1) and ending on the last day of the third fiscal year which begins after such 30-day period.

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CHAPTER 5—DEPORTATION; ADJUSTMENT OF STATUS

GENERAL CLASSES OF DEPORTABLE ALIENS

SEC. 241. (a) Any alien in the United States (including an alien crewman) shall, upon the order of the Attorney General, be deported who—

(1) * * *

* * * * * * *

(18) has been convicted under section 278 of this Act or under section 4 of the Immigration Act of February 5, 1917; [or]

(19) during the period beginning on March 23, 1933, and ending on May 8, 1945, under the direction of, or in association with—

(A) the Nazi government of Germany,

(B) any government in any area occupied by the military forces of the Nazi government of Germany,

(C) any government established with the assistance or cooperation of the Nazi government of Germany, or

(D) any government which was an ally of the Nazi government of Germany,

ordered, incited, assisted, or otherwise participated in the persecution of any person because of race, religion, national origin, or political opinion[.]; *or*

(20) obtains the status of an alien who becomes lawfully admitted for permanent residence under section 210A and fails to meet the requirement of section 210A(d)(3)(A) by the end of the applicable period.

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SUSPENSION OF DEPORTATION; VOLUNTARY DEPARTURE

SEC. 244. (a) * * *

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(b)*(1)* The requirement of continuous physical presence in the United States specified in paragraphs (1) and (2) of subsection (a) of this section shall not be applicable to an alien who (A) has served for a minimum period of twenty-four months in an active-duty status in the Armed Forces of the United States and, if separated from such service, was separated under honorable conditions, and (B) at the time of his enlistment or induction was in the United States.

(2) In determining the period of continuous physical presence in the United States under subsection (a), there shall not be included any period in which the alien was in the United States as—

(A) a nonimmigrant described in subparagraph (F) or (M) of section 101(a)(15), or

(B) a nonimmigrant described in section 101(a)(15)(H)(iii), pursuant to a waiver under section 212(e)(5)(B).

(3) An alien shall not be considered to have failed to maintain continuous physical presence in the United States under paragraphs (1) and (2) of subsection (a) if the absence from the United States was brief, casual, and innocent and did not meaningfully interrupt the continuous physical presence.

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ADJUSTMENT OF STATUS OF NONIMMIGRANT TO THAT OF PERSON ADMITTED FOR PERMANENT RESIDENCE

SEC. 245. (a) * * *

* * * * * * *

(c) The provisions of this section shall not be applicable to (1) an alien crewman; (2) an alien (other than an immediate relative as defined in section 201(b) or a special immigrant described in section 101(a)(27)(H)) who hereafter continues in or accepts unauthorized employment prior to filing an application for adjustment of status; [or] (3) any alien admitted in transit without visa under section 212(d)(4)(C), *(4) an alien (other than an immediate relative specified in section 201(b) or an alien who has received a waiver of the two-year foreign residence requirement of section 212(e)(1)) who entered the United States classified as a nonimmigrant under subparagraph (F) or (M) of section 101(a)(15); or (5) an alien (other than an immediate relative as defined in section 201(b)) who was admitted as a nonimmigrant visitor without a visa under section 212(l) or section 217.*

ADJUSTMENT OF STATUS OF CERTAIN ENTRANTS BEFORE JANUARY 1, 1982, TO THAT OF PERSON ADMITTED FOR LAWFUL RESIDENCE

SEC. 245A. (a) TEMPORARY RESIDENT STATUS.—The Attorney General shall adjust the status of an alien to that of an alien lawfully admitted for temporary residence if the alien meets the following requirements:

(1) ENTRY, PHYSICAL PRESENCE, AND TIMELY APPLICATION.—

(A) DURING APPLICATION PERIOD.—Except as provided in subparagraph (B), the alien must apply for such adjustment during the 18-month period beginning on a date (not later than 180 days after the date of enactment of this section) designated by the Attorney General.

(B) APPLICATION WITHIN 30 DAYS OF SHOW-CAUSE ORDER.—An alien who, at any time during the first 17 months of the 18-month period described in subparagraph (A), is the subject of an order to show cause issued under section 242, must make application under this section not later than the end of the 30-day period beginning either on the first day of such 18-month period or on the date of the issuance of such order, whichever day is later.

(C) TREATMENT OF CERTAIN CUBAN AND HAITIAN ENTRANTS.—For purposes of this subsection, an alien in the status of a Cuban and Haitian entrant described in paragraph (1) or (2)(A) of section 501(e) of Public Law 96-422 shall be considered to have entered the United States and to be in an unlawful status in the United States.

(2) CONTINUOUS UNLAWFUL RESIDENCE SINCE 1982.—

(A) IN GENERAL.—The alien must establish that he entered the United States before January 1, 1982, and that he has resided continuously in the United States in an unlawful status since such date and through the date the application is filed under this subsection.

(B) NONIMMIGRANTS.—In the case of an alien who entered the United States as a nonimmigrant before January 1, 1982, the alien must establish that the alien's period of authorized stay as a nonimmigrant expired before such date through the passage of time or the alien's unlawful status was known to the Government as of such date.

(C) EXCHANGE VISITORS.—If the alien was at any time a nonimmigrant exchange alien (as defined in section 101(a)(15)(J)), the alien must establish that the alien was not subject to the two-year foreign residence requirement of section 212(e) or has fulfilled that requirement or received a waiver thereof.

(3) CONTINUOUS PHYSICAL PRESENCE SINCE ENACTMENT.—

(A) IN GENERAL.—The alien must establish that the alien has been continuously physically present in the United States since the date of the enactment of this section.

(B) TREATMENT OF BRIEF, CASUAL, AND INNOCENT ABSENCES.— An alien shall not be considered to have failed to maintained continuous physical presence in the United States for purposes of subparagraph (A) by virtue of brief, casual, and innocent absences from the United States.

(C) ADMISSIONS.—Nothing in this section shall be construed as authorizing an alien to apply for admission to, or to be admitted to, the United States in order to apply for adjustment of status under this subsection.

(4) ADMISSIBLE AS IMMIGRANT.—The alien must establish that he—

(A) is admissible to the United States as an immigrant, except as otherwise provided under subsection (d)(2),

(B) has not been convicted of any felony or of three or more misdemeanors committed in the United States,

(C) has not assisted in the persecution of any person or persons on account of race, religion, nationality, membership in a particular social group, or political opinion, and

(D) is registered or registering under the Military Selective Service Act, if the alien is required to be so registered under that Act.

(b) SUBSEQUENT ADJUSTMENT TO PERMANENT RESIDENCE AND NATURE OF TEMPORARY RESIDENT STATUS.—

(1) ADJUSTMENT TO PERMANENT RESIDENCE.—The Attorney General shall adjust the status of any alien provided lawful temporary resident status under subsection (a) to that of an alien lawfully admitted for permanent residence if the alien meets the following requirements:

(A) TIMELY APPLICATION AFTER ONE YEAR'S RESIDENCE.—The alien must apply for such adjustment during the one-year period beginning with the thirteenth month that begins after the date the alien was granted such temporary resident status.

(B) CONTINUOUS RESIDENCE.—

(i) IN GENERAL.—The alien must establish that he has continuously resided in the United States since the date the alien was granted such temporary resident status.

(ii) TREATMENT OF CERTAIN ABSENCES.—An alien shall not be considered to have lost the continuous residence referred to in clause (i) by reason of an absence from the United States permitted under paragraph (3)(A).

(C) ADMISSIBLE AS IMMIGRANT.—The alien must establish that he—

(i) is admissible to the United States as an immigrant, except as otherwise provided under subsection (d)(2), and

(ii) has not been convicted of any felony or three or more misdemeanors committed in the United States.

(D) BASIC CITIZENSHIP SKILLS.—

(i) IN GENERAL.—The alien must demonstrate that he either—

(I) meets the requirements of section 312 (relating to minimal understanding of ordinary English and a knowledge and understanding of the history and government of the United States), or

(II) is satisfactorily pursuing a course of study (recognized by the Attorney General) to achieve such an understanding of English and such a knowledge and understanding of the history and government of the United States.

(ii) EXCEPTION FOR ELDERLY INDIVIDUALS.—The Attorney General may, in his discretion, waive all or part of the requirements of clause (i) in the case of an alien who is 65 years of age or older.

(iii) RELATION TO NATURALIZATION EXAMINATION.—In accordance with regulations of the Attorney General, an alien who has demonstrated under clause (i)(I) that the alien meets the requirements of section 312 may be considered to have satisfied the requirements of that section for purposes of becoming naturalized as a citizen of the United States under title III.

(2) TERMINATION OF TEMPORARY RESIDENCE.—The Attorney General shall provide for termination of temporary resident status granted an alien under subsection (a)—

(A) if it appears to the Attorney General that the alien was in fact not eligible for such status;

(B) if the alien commits an act that (i) makes the alien inadmissible to the United States as an immigrant, except as otherwise provided under subsection (d)(2), or (ii) is convicted of any felony or three or more misdemeanors committed in the United States; or

(C) at the end of the twenty-fifth month beginning after the date the alien is granted such status, unless the alien has filed an application for adjustment of such status pursuant to paragraph (1) and such application has not been denied.

(3) AUTHORIZED TRAVEL AND EMPLOYMENT DURING TEMPORARY RESIDENCE.—During the period an alien is in the lawful temporary resident status granted under subsection (a)—

(A) AUTHORIZATION OF TRAVEL ABROAD.—The Attorney General shall, in accordance with regulations, permit the alien to return to the United States after such brief and casual trips abroad as reflect an intention on the part of the alien to adjust to lawful permanent resident status under paragraph (1) and after brief temporary trips abroad occasioned by a family obligation involving an occurrence such as the illness or death of a close relative or other family need.

(B) AUTHORIZATION OF EMPLOYMENT.—The Attorney General shall grant the alien authorization to engage in employment in the United States and provide to that alien an "employment authorized" endorsement or other appropriate work permit.

(c) APPLICATIONS FOR ADJUSTMENT OF STATUS.—

(1) TO WHOM MAY BE MADE.—The Attorney General shall provide that applications for adjustment of status under subsection (a) or under subsection (b)(1) may be filed—

(A) with the Attorney General, or

(B) with a designated entity (designated under paragraph (2)), but only if the applicant consents to the forwarding of the application to the Attorney General.

(2) DESIGNATION OF ENTITIES TO RECEIVE APPLICATIONS.—For purposes of receiving applications under this section, the Attorney General—

(A) shall designate qualified voluntary organizations and other qualified State, local, and community organizations, and

(B) may designate such other persons as the Attorney General determines are qualified and have substantial experience, demonstrated competence, and traditional long-term involvement in the preparation and submittal of applications for adjustment of status under section 209 or 245, Public Law 89-732, or Public Law 95-145.

(3) TREATMENT OF APPLICATIONS BY DESIGNATED ENTITIES.—Each designated entity must agree to forward to the Attorney General applications filed with it in accordance with paragraph (1)(B) but not to forward to the Attorney General applications filed with it unless the applicant has consented to such forwarding. No such entity may make a determination required by this section to be made by the Attorney General.

(4) LIMITATION ON ACCESS TO INFORMATION.—Files and records of designated entities operating under this section are confidential and the Attorney General and the Service shall not have access to such files or records relating to an alien without the consent of the alien.

(5) CONFIDENTIALITY OF INFORMATION.—Neither the Attorney General, nor any other official or employee of the Department of Justice, or bureau or agency thereof, may—

(A) use the information furnished pursuant to an application filed under this section for any purpose other than to make a determination on the application or for enforcement of paragraph (6),

(B) make any publication whereby the information furnished by any particular individual can be identified, or

(C) permit anyone other than the sworn officers and employees of the Department or bureau or agency or, with respect to applications filed with a designated entity, that designated entity, to examine individual applications.

Anyone who uses, publishes, or permits information to be examined in violation of this paragraph shall be fined not more than $5,000 or imprisoned not more than five years, or both.

(6) PENALTIES FOR FALSE STATEMENTS IN APPLICATIONS.—Whoever files an application for adjustment of status under this section and knowingly and willfully falsifies, conceals, or covers up a material fact or makes any false, fictitious, or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious, or fraudulent statement or entry, shall be fined not more than $10,000 or imprisoned not more than five years, or both.

(d) WAIVER OF NUMERICAL LIMITATIONS AND CERTAIN GROUNDS FOR EXCLUSION.—

(1) NUMERICAL LIMITATIONS DO NOT APPLY.—The numerical limitations of section 201 and 202 shall not apply to the adjustment of aliens to lawful permanent resident status under this section.

(2) WAIVER OF GROUNDS FOR EXCLUSION.—In the determination of an alien's admissibility under subsections (a)(4)(A), (b)(1)(C)(i), and (b)(2)(B)—

(A) GROUNDS OF EXCLUSION NOT APPLICABLE.—The provisions of paragraphs (14), (20), (21), (25), and (32) of section 212(a) shall not apply.

(B) WAIVER OF OTHER GROUNDS.—

(i) IN GENERAL.—Except as provided in clause (ii), the Attorney General may waive any other provision of section 212(a) in the case of individual aliens for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest.

(ii) GROUNDS THAT MAY NOT BE WAIVED.—The following provisions of section 212(a) may not be waived by the Attorney General under clause (i):

(I) Paragraphs (9) and (10) (relating to criminals).

(II) Paragraph (15) (relating to aliens likely to become public charges) insofar as it relates to an application for adjustment to permanent residence.

(III) Paragraph (23) (relating to drug offenses), except for so much of such paragraph as relates to a single offense of simple possession of 30 grams or less of marihuana.

(IV) Paragraphs (27), (28), and (29) (relating to national security and members of certain organizations).

(V) Paragraph (33) (relating to those who assisted in the Nazi persecutions).

(iii) SPECIAL RULE FOR DETERMINATION OF PUBLIC CHARGE.—An alien is not ineligible for adjustment of status under this section due to being inadmissible under section 212(a)(15) if the alien demonstrates a history of employment in the United States evidencing self-support without reliance on public cash assistance.

(C) MEDICAL EXAMINATION.—The alien shall be required, at the alien"s expense, to meet the same requirements with respect to a medical examination as are required of aliens seeking entry into the United States as immigrants.

(e) TEMPORARY STAY OF DEPORTATION AND WORK AUTHORIZATION FOR CERTAIN APPLICANTS.—

(1) BEFORE APPLICATION PERIOD.—The Attorney General shall provide that in the case of an alien wh is apprehended before the beginning of the application period described in subsection (a)(1)(A) and who can establish a nonfrivolous case of eligibility to have his status adjusted under subsection (a) (but for the fact that he may not apply for such adjustment until the beginning of such period), until the alien has had the opportunity during the first 30 days of the application period to complete the filing of an application for adjustment, the alien—

(A) may not be deported, and

(B) shall be granted authorization to engage in employment in the United States and be provided an "employment authorized" endorsement or other appropriate work permit.

(2) DURING APPLICATION PERIOD.—The Attorney General shall provide that in the case of an alien who presents a nonfrivolous application for adjustment of status under subsection (a) during

the application period, and until a final determination on the application has been made in accordance with this section, the alien—

(A) may not be deported, and

(B) shall be granted authorization to engage in employment in the United States and be provided an "employment authorized" endorsement or other appropriate work permit.

(f) ADMINISTRATIVE AND JUDICIAL REVIEW.—

(1) ADMINISTRATIVE AND JUDICIAL REVIEW.—There shall be no administrative or judicial review of a determination respecting an application for adjustment of status under this section except in accordance with this subsection.

(2) ADMINISTRATIVE REVIEW.—

(A) SINGLE LEVEL OF ADMINISTRATIVE APPELLATE REVIEW.—The Attorney General shall establish an appellate authority to provide for a single level of administrative appellate review of such a determination.

(B) STANDARD FOR REVIEW.—Such administrative appellate review shall be based solely upon the administrative record established at the time of the determination on the application and upon such additional or newly discovered evidence as may not have been available at the time of the determination.

(3) JUDICIAL REVIEW.—

(A) LIMITATION TO REVIEW OF DEPORTATION.—There shall be judicial review of such a denial only in the judicial review of an order of deportation under section 106.

(B) STANDARD FOR JUDICIAL REVIEW.—Such judicial review shall be based solely upon the administrative record established at the time of the review by the appellate authority and the findings of fact and determinations contained in such record shall be conclusive unless the applicant can establish abuse of discretion or that the findings are directly contrary to clear and convincing facts contained in the record considered as a whole.

(g) REGULATIONS IMPLEMENTING SECTION.—The Attorney General, after consultation with the Committees on the Judiciary of the House of Representatives and of the Senate and with qualified designated entities, shall prescribe—

(1) regulations establishing a definition of the term "resided continuously", as used in this section, and the evidence needed to establish that an alien has resided continuously in the United States for purposes of this section, and

(2) such other regulations as may be necessary to carry out this section.

Such regulations may be prescribed to take effect on an interim final basis if the Attorney General determines that this is necessary in order to implement this section in a timely manner.

(h) TEMPORARY DISQUALIFICATION OF NEWLY LEGALIZED ALIENS FROM RECEIVING CERTAIN PUBLIC WELFARE ASSISTANCE.—

(1) IN GENERAL.—During the five-year period beginning on the date an alien was granted lawful temporary resident status under subsection (a), and notwithstanding any other provision of law—

(A) except as provided in paragraph (2), the alien is not eligible for—

(i) any program of financial assistance furnished under Federal law (whether through grant, loan, guarantee, or otherwise) on the basis of financial need, as such programs are identified by the Attorney General in consultation with other appropriate heads of the various departments and agencies of Government,

(ii) medical assistance under a State plan approved under title XIX of the Social Security Act, and

(iii) assistance under the Food Stamp Act of 1977; and

(B) a State or political subdivision therein may, to the extent consistent with subparagraph (A), provide that the alien is not eligible for the programs of financial assistance or for medical assistance described in subparagraph (A)(ii) furnished under the law of that State or political subdivision.

(2) EXCEPTIONS.—Paragraph (1) shall not apply—

(A) to a Cuban and Haitian entrant (as defined in paragraph (1) or (2)(A) of section 501(e) of Public Law 96-422, as in effect on April 1, 1983),

(B) in the case of assistance furnished to an alien who is an aged, blind, or disabled individual (as defined in section 1614(a)(1) of the Social Security Act), or

(C) in the case of medical assistance (i) for care and services provided to an alien who is under 18 years of age, (ii) for emergency services (as defined for purposes of section 1916(a)(2)(D) of the Social Security Act) or (iii) for services described in section 1916(a)(2)(B) of such Act (relating to services for pregnant women).

(3) TREATMENT OF CERTAIN PROGRAMS.—Assistance furnished under any of the following provisions of law shall not be construed to be financial assistance described in paragraph (1)(A)(i):

(A) The National School Lunch Act.

(B) The Child Nutrition Act of 1966.

(C) The Vocational Education Act of 1963.

(D) Chapter 1 of the Education Consolidation and Improvement Act of 1981.

(E) The Headstart-Follow Through Act.

(F) The Job Training Partnership Act.

(G) Subparts 4 and 5 of part A of title IV of the Higher Education Act of 1965.

(H) The Public Health Service Act.

(I) Title V of the Social Security Act.

(4) ADJUSTMENT NOT AFFECTING FASCELL-STONE BENEFITS.—For the purpose of section 501 of the Refugee Education Assistance Act of 1980 (Public Law 96-122), assistance shall be continued under such section with respect to an alien without regard to the alien's adjustment of status under this section.

(5) MODIFICATION OF MEDICAID REQUIREMENTS.—The eligibility, comparability, and any other State plan requirements of title XIX of the Social Security Act are superceded to the extent

required to restrict the medical assistance in the manner described in this subsection. The Secretary of Health and Human Services, in coordination with the Attorney General, shall promulgate regulations in order to carry out this subsection.

(i) DISSEMINATION OF INFORMATION ON LEGALIZATION PROGRAM.—Beginning not later than the date designated by the Attorney General under subsection (a)(1)(A), the Attorney General, in cooperation with designated entities, shall broadly disseminate in English and other appropriate languages information respecting the benefits which aliens may receive under this section and the requirements to obtain such benefits. Such information shall include—

(1) information respecting the requirements that aliens with lawful temporary resident status would have to meet to have their status adjusted to permanent resident status under subsection (b)(1) and the facilities available to provide education and employment training and opportunities in order to meet such requirements;

(2) information on the conditions under which temporary lawful resident status can be rescinded under subsection (b)(2); and

(3) information on conditions for employment and foreign travel of aliens with lawful temporary resident status under subsection (b)(3).

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CHANGE OF NONIMMIGRANT CLASSIFICATION

SEC. 248. The Attorney General may, under such conditions as he may prescribe, authorize a change from any nonimmigrant classification to any other nonimmigrant classification in the case of any alien lawfully admitted to the United States as a nonimmigrant who is continuing to maintain that status, except in the case of—

(1) an alien classified as a nonimmigrant under subparagraph (C), (D), or (K) of section 101(a)(15),

(2) an alien classified as a nonimmigrant under subparagraph (J) of section 101(a)(15) who came to the United States or acquired such classification in order to receive graduate medical education or training, [and]

(3) an alien (other than an alien described in paragraph (2)) classified as a nonimmigrant under subparagraph (J) of section 101(a)(15) who is subject to the two-year foreign residence requirement of section 212(e) and has not received a waiver thereof, unless such alien applies to have the alien's classification changed from classification under subparagraph (J) of section 101(a)(15) to a classification under subparagraph (A) or (G) of such section[.] *, and*

(4) an alien admitted as a nonimmigrant visitor without a visa under section 212(l) or section 217.

RECORD OF ADMISSION FOR PERMANENT RESIDENCE IN THE CASE OF CERTAIN ALIENS WHO ENTERED THE UNITED STATES PRIOR TO JULY 1, 1924 OR [JUNE 30, 1948] *JANUARY 1, 1976*

SEC. 249. A record of lawful admission for permanent residence may, in the discretion of the Attorney General and under such regulations as he may prescribe, be made in the case of any alien, as of the date of the approval of his application or, if entry occurred prior to July 1, 1924, as of the date of such entry, if no such record is otherwise available and such alien shall satisfy the Attorney General that he is not inadmissible under section 212(a) insofar as it relates to criminals, procurers and other immoral persons, subversives, violators of the narcotic laws or smugglers of aliens, and he establishes that he—

(a) entered the United States prior to [June 30, 1948;] *January 1, 1976;*

(b) has had his residence in the United States continuously since such entry;

(c) is a person of good moral character; and

(d) is not ineligible to citizenship.

* * * * * * *

BRINGING IN AND HARBORING CERTAIN ALIENS

SEC. 274. [(a) Any person, including the owner, operator, pilot, master, commanding officer, agent or consignee of any means of transportation who—

[(1) brings into or lands in the United States, by any means of transportation or otherwise, or attmepts, by himself or through another, to bring into or land in the United States, by any means of transportation or otherwise;

[(2) knowing that he is in the United States in violation of law, and knowing or having reasonable grounds to believe that his last entry into the United States occurred less than three years prior thereto, transports, or moves, or attempts to transport or move, within the United States by means of transportation or otherwise, in furtherance of such violation of law;

[(3) willfully or knowingly conceals, harbors, or shields from detection, or attempts to conceal, harbor, or shield from detection, in any place, including any building or any means of transportation; or

[(4) willfully or knowingly encourages or induces, or attempts to encourage or induce, either directly or indirectly, the entry into the United States of—

any alien, including an alien crewman, not duly admitted by an immigration officer or not lawfully entitled to enter or reside within the United States under the terms of this Act or any other law relating to the immigration or expulsion of aliens, shall be guilty of a felony, and upon conviction thereof shall be punished by a fine not exceeding $2,000 or by imprisonment for a term not exceeding five years, or both, for each alien in respect to whom any violation of this subsection occurs: *Provided, however,* That for the purposes of this section, employment (including the usual and

normal practices incident to employment) shall not be deemed to constitute harboring.]

(a) CRIMINAL PENALTIES.—(1) Any person who—

(A) knowing that a person is an alien, brings to or attempts to bring to the United States in any manner whatsoever such person at a place other than a designated port of entry or place other than as designated by the Commissioner, regardless of whether such alien has received prior official authorization to come to, enter, or reside in the United States and regardless of any future official action which may be taken with respect to such alien;

(B) knowing or in reckless disregard of the fact that an alien has come to, entered, or remains in the United States in violation of law, transports, or moves or attempts to transport or move such alien within the United States by means of transportation or otherwise, in furtherance of such violation of law; or

(C) knowing or in reckless disregard of the fact that an alien has come to, entered, or remains in the United States in violation of law, conceals, harbors, or shields from detection, or attempts to conceal, harbor, or shield from detection, such alien in any place, including any building or any means of transportation,

shall be fined not more than $10,000, imprisoned not more than five years, or both, for each alien in respect to whom any violation of this paragraph occurs.

(2) Any person who, knowing or in reckless disregard of the fact that an alien has not received prior official authorization to come to, enter, or reside in the United States, brings to or attempts to bring to the United States in any manner whatsoever, such alien, regardless of any official action which may later be taken with respect to such alien shall, for each transaction constituting a violation of this paragraph, regardless of the number of aliens involved—

(A) be fined not more than $5,000, or imprisoned not more than one year, or both; or

(B) in the case of—

(i) a second or subsequent offense,

(ii) an offense done for the purpose of commercial advantage or private financial gain, or

(iii) an offense in which the alien is not upon arrival immediately brought and presented to an appropriate immigration officer at a designated port of entry,

be fined not more than $10,000, or imprisoned not more than five years, or both.

UNLAWFUL EMPLOYMENT OF ALIENS

SEC. 274A. (a) MAKING EMPLOYMENT OF UNAUTHORIZED ALIENS UNLAWFUL.—

(1) IN GENERAL.—It is unlawful for a person or other entity after the date of the enactment of this section to hire, or to recruit or refer for a fee, for employment in the United States—

(A) an alien knowing the alien is an unauthorized alien (as defined in subsection (g)) with respect to such employment, or

(B) an individual without complying with the requirements of subsection (b).

(2) CONTINUING EMPLOYMENT.—It is unlawful for a person or other entity, after hiring an alien for employment subsequent to the date of the enactment of this section and in accordance with paragraph (1), to continue to employ the alien in the United States knowing the alien is (or has become) an unauthorized alien with respect to such employment.

(3) DEFENSE.—A person or entity that establishes that it has complied in good faith with the requirements of subsection (b) with respect to the hiring, recruiting, or referral for employment of an alien in the United States has established an affirmative defense that the person or entity has not violated paragraph (1)(A) with respect to such hiring, recruiting, or referral.

(4) USE OF LABOR THROUGH CONTRACT.—For purposes of this section, a person or other entity who uses a contract, subcontract, or exchange, entered into, renegotiated, or extended after the date of the enactment of this section, to obtain the labor of an alien in the United States knowing that the alien is an unauthorized alien (as defined in subsection (g)) with respect to performing such labor, shall be considered to have hired the alien for employment in the United States in violation of paragraph (1)(A).

(5) USE OF STATE EMPLOYMENT AGENCY DOCUMENTATION.—For purposes of paragraphs (1)(B) and (3), a person or entity shall be deemed to have complied with the requirements of subsection (b) with respect to the hiring of an individual who was referred for such employment by a State employment agency (as defined by the Attorney General), if the person or entity has and retains (for the period and in the manner described in subsection (b)(3)) appropriate documentation of such referral by that agency, which documentation certifies that the agency has complied with the procedures specified in subsection (b) with respect to the individual's referral.

(b) EMPLOYMENT VERIFICATION SYSTEM.—The requirements referred to in paragraphs (1)(B) and (3) of subsection (a) are, in the case of a person or other entity hiring, recruiting, or referring an individual for employment in the United States, the requirements specified in the following three paragraphs (and, to the extent applicable, paragraph (7)(C)):

(1) ATTESTATION AFTER EXAMINATION OF DOCUMENTATION AND VALIDATION OF SOCIAL SECURITY ACCOUNT NUMBER.—

(A) IN GENERAL.—The person or entity must attest, under penalty of perjury and on a form established or designated by the Attorney General by regulation, that he has verified that the individual is eligible to be employed (or recruited or referred for employment) in the United States—

(i) by examining—

(I) the individual's United States passport, or the individual's unexpired foreign passport, if the foreign passport has an appropriate, unexpired en-

dorsement of the Attorney General authorizing the individual's employment in the United States, or

(II) a document described in subparagraph (B) and a document described in subparagraph (C); and

(ii) by validating (to the extent and in the manner required under paragraph (7)(C)) the social security account number presented by the individual.

A person or entity has complied with the requirement of clause (i) of this subparagraph with respect to examination of a document if the document reasonably appears on its face to be genuine. If an individual provides a document or combination of documents that reasonably appears on its face to be genuine and that is sufficient to meet the requirements of clause (i), nothing in this paragraph shall be construed as requiring the person or entity to solicit the production of any other document or as requiring the individual to produce such a document.

(B) DOCUMENTS EVIDENCING EMPLOYMENT AUTHORIZATION.—A document described in this subparagraph is the individual's—

(i) social security account number card issued by the Social Security Administration,

(ii) certificate of birth in the United States or United States consular report of birth, or

(iii) in the case of an individual without a social security card or a certificate of birth in the United States or a United States consular report of birth, any other identification acceptable to the Attorney General.

(C) DOCUMENTS ESTABLISHING IDENTITY OF INDIVIDUAL.—A document described in this subparagraph is the individual's—

(i) alien documentation, identification, and telecommunication card, or similar fraud-resistant card issued by the Attorney General to aliens, or other identification issued by the Attorney General to aliens who establish eligibility for employment,

(ii) driver's license or similar document issued for the purpose of identification by a State, if it contains a photograph of the individual or such other personal identifying information relating to the individual as the Attorney General finds, by regulation, sufficient for purposes of this section, or

(iii) in the case of individuals under 16 years of age or in a State which does not provide for issuance of an identification document (other than a driver's license) referred to in clause (ii), documentation of personal identity of such other type as the Attorney General finds, by regulation, provides a reliable means of identification.

(2) INDIVIDUAL ATTESTATION OF EMPLOYMENT AUTHORIZATION.—The individual must attest, under penalty of perjury and on the form designated or established by the Attorney General for purposes of paragraph (1), that the individual is a citi-

zen or national of the United States, an alien lawfully admitted for permanent residence, or an alien who is authorized under this Act or by the Attorney General to be hired, recruited, or referred for such employment.

(3) RETENTION OF VERIFICATION FORM.—After completion of such form in accordance with paragraphs (1) and (2), the person or entity must retain the form and make it available for inspection by officers of the Service or of the Department of Labor during such period as the Attorney General shall specify in regulations.

(4) COPYING OF DOCUMENTATION PERMITTED.—Notwithstanding any other provision of law, the person or entity may copy a document presented by an individual pursuant to this subsection and may retain the copy, but only (except as otherwise permitted under law) for the purpose of complying with the requirements of this subsection.

(5) TIME FOR COMPLIANCE.—A person or entity has complied with the requirements of this subsection, with respect to the hiring of an individual, if the requirements of this subsection are first met not later than noon of the day following the day on which the individual is first employed by that person or entity.

(6) LIMITATION ON USE OF ATTESTATION FORM.—A form designated or established by the Attorney General under this subsection and any information contained in or appended to such form, may not be used for purposes other than for enforcement of this section or section 1546 of title 18, United States Code.

(7) SOCIAL SECURITY ACCOUNT NUMBER VALIDATION SYSTEM.—

(A) ESTABLISHMENT OF SYSTEM.—The Attorney General, in cooperation with the Secretaries of Labor and Health and Human Services, shall establish a method to validate the social security account numbers of individuals applying to be hired, or recruited or referred for a fee, for employment in the United States.

(B) PUBLICATION.—The Attorney General shall provide for publication in the Federal Register of notice of the establishment of the validation method and the procedures for its use not earlier than 6 months, and not later than 18 months, after the date of the enactment of this section.

(C) IMPLEMENTATION.—Beginning on an effective date (not earlier than 90 days, and not later than 180 days, after the date final regulations are published under subparagraph (B)) set forth by the Attorney General, in order to comply with the requirement of paragraph (1)(A) of this subsection in the case of a person or other entity hiring, or recruiting or referring for a fee, an individual for employment in the United States, the person or other entity must, pursuant to the verification method—

(i) submit the social security account number of the individual, and

(ii) be provided and record on the form designated or established for purposes of that paragraph a validation code indicating that the number submitted is valid.

(c) NO AUTHORIZATION OF NATIONAL IDENTIFICATION CARDS.—Nothing in this section shall be construed to authorize, directly or indirectly, the issuance or use of national identification cards or the establishment of a national identification card.

(d) PENALTIES.—

(1) CIVIL MONEY PENALTY FOR UNLAWFUL EMPLOYMENT, RECRUITING, OR REFERRAL.—

(A) IN GENERAL.—In the case of a person or entity which is determined (after notice and opportunity for an administrative hearing under paragraph (4)(A)) to have violated paragraph (1)(A) or (2) of subsection (a) and which—

(i) has not previously been determined (after opportunity for a hearing under paragraph (4)(A)) to have violated either such paragraph, the person or entity shall be subject to a civil penalty of not less than $1,000, and not more than $2,000, for each unauthorized alien with respect to whom the violation occurred, or

(ii) has previously been determined (after opportunity for a hearing under paragraph (4)(A)) to have violated either such paragraph, the person or entity shall be subject to a civil penalty of not less than $2,000, and not more than $5,000, for each unauthorized alien with respect to whom the violation occurred.

In determining the level of civil penalty that is applicable under this subparagraph for violations of paragraph (1)(A) or (2) of subsection (a), determinations of more than one violation in the course of a single proceeding or adjudication shall be counted as a single determination.

(B) CRIMINAL PENALTY FOR PATTERN OR PRACTICE VIOLATIONS.—In the case of a person or entity which has engaged in a pattern or practice of employment, recruitment, or referral in violation of paragraph (1)(A) or (2) of subsection (a), the person or entity shall be fined not more than $1,000, imprisoned not more than six months, or both, for each violation.

(2) ENJOINING OF PATTERN OR PRACTICE VIOLATIONS.—Whenever the Attorney General has reasonable cause to believe that a person or entity is engaged in a pattern or practice of employment, recruitment, or referral in violation of paragraph (1)(A) or (2) of subsection (a), the Attorney General may bring a civil action in the appropriate district court of the United States requesting such relief, including a permanent or temporary injunction, restraining order, or other order against the person or entity, as the Attorney General deems necessary.

(3) CIVIL MONEY PENALTY FOR PAPERWORK VIOLATIONS.—A person or entity which is determined (after notice and opportunity for an administrative hearing under paragraph (4)(A)) to have violated subsection (a)(1)(B) shall be subject to a civil penalty of not less than $250 and not more than $1,000 for each individual with respect to whom such violation occurred. In determining the amount of the penalty, due consideration shall be given to the size of the business of the employer being charged, the good faith of the employer, the seriousness of the violation, and the history of previous violations.

(4) ADMINISTRATIVE PROCESS.—

(A) HEARING.—

(i) IN GENERAL.—Before assessing a civil penalty against a person or entity under this subsection for a violation of subsection (a), the Attorney General shall provide the person or entity with notice and, upon request made within a reasonable time (of not less than 30 days, as established by the Attorney General) of the date of the notice, a hearing respecting the violation.

(ii) CONDUCT OF HEARING.—Any hearing so requested shall be conducted before an administrative law judge. The hearing shall be conducted in accordance with the requirements of section 554 of title 5, United States Code. The hearing shall be held at the nearest practicable place to the place where the person or entity resides or of the place where the alleged violation occurred. If no hearing is so requested, the assessment shall constitute a final and unappealable order.

(iii) JUDICIAL REVIEW.—A person or entity (including the Attorney General) adversely affected by a final order respecting an assessment may, within 60 days after the date the final order is issued, file a petition in the Court of Appeals for the appropriate circuit for review of the order.

(B) COLLECTION OF CIVIL PENALTIES.—If the person or entity against whom a civil penalty is assessed fails to pay the penalty within the time prescribed in such order, the Attorney General shall file a suit to collect the amount in the appropriate district court of the United States.

(5) TREATMENT OF DISTINCT ENTITIES.—In applying this subsection in the case of a person or entity composed of distinct, physically separate subdivisions each of which provides separately for the hiring, recruiting, or referral for employment, without reference to the practices of, and not under the control of or common control with, another subdivision, each such subdivision shall be considered a separate person or entity.

(e) PROHIBITION OF INDEMNITY BONDS.—

(1) PROHIBITION.—It is unlawful for a person or other entity, in the hiring, recruiting, or referring for employment of any individual, to require the individual to post a bond or security, to pay or agree to pay an amount, or otherwise to provide a financial guarantee or indemnity, against any potential liability arising under this section relating to such hiring, recruiting, or referring of the individual.

(2) CIVIL PENALTY.—Any person or entity which is determined, after notice and opportunity for an administrative hearing, to have violated paragraph (1) shall be subject to a civil penalty of $1,000 for each violation and to an administrative order requiring the return of any amounts received in violation of such paragraph to the employee or, if the employee cannot be located, to the general fund of the Treasury.

(f) MISCELLANEOUS PROVISIONS.—

(1) DOCUMENTATION.—In providing documentation or endorsement of authorization of aliens (other than aliens lawfully ad-

mitted for permanent residence) authorized to be employed in the United States, the Attorney General shall provide that any limitations with respect to the period or type of employment or employer shall be conspicuously stated on the documentation or endorsement.

(2) PREEMPTION.—The provisions of this section preempt any State or local law imposing civil or criminal sanctions (other than through licensing and similar laws) upon those who employ, or recruit or refer for a fee for employment, unauthorized aliens.

(g) DEFINITION OF UNAUTHORIZED ALIEN.—As used in this section, the term "unauthorized alien" means, with respect to the employment of an alien at a particular time, that the alien is not at that time either (1) an alien lawfully admitted for permanent residence, or (2) authorized to be so employed by this Act or by the Attorney General.

UNFAIR IMMIGRATION-RELATED EMPLOYMENT PRACTICES

SEC. 274B. (a) PROHIBITION OF DISCRIMINATION BASED ON NATIONAL ORIGIN OR CITIZENSHIP STATUS.—

(1) GENERAL RULE.—It is an unfair immigration-related employment practice for a person or other entity to discriminate against any individual (other than an unauthorized alien) with respect to the hiring, or recruitment or referral for a fee, of the individual for employment or the discharging of the individual from employment—

(A) because of such individual's national origin, or

(B) in the case of a citizen or intending citizen (as defined in paragraph (3)), because of such individual's citizenship status.

(2) EXCEPTIONS.—Paragraph (1) shall not apply to—

(A) a person or other entity that employs three or fewer employees,

(B) a person's or entity's discrimination because of an individual's national origin if the discrimination with respect to that person or entity and that individual is covered under section 703 of the Civil Rights Act of 1964,

(C) discrimination because of citizenship status which is otherwise required in order to comply with law, regulation, or executive order, or required by Federal, State, or local government contract, or which the Attorney General determines to be essential for an employer to do business with an agency or department of the Federal, State, or local government, or

(D) discrimination against an individual on the basis of the individual's English language skill in those certain instances where the English language skill is a bona fide occupational qualification reasonably necessary to the normal operation of that particular business or enterprise.

(3) DEFINITION OF CITIZEN OR INTENDING CITIZEN.—As used in paragraph (1), the term "citizen or intending citizen" means an individual who—

(A) is a citizen or national of the United States, or

(B) is an alien who—

(i) is lawfully admitted for permanent residence, is granted the status of an alien lawfully admitted for temporary residence under section 245A(a)(1), is admitted as a refugee under section 207, or is granted asylum under section 208, and

(ii) evidences an intention to become a citizen of the United States through completing a declaration of intention to become a citizen;

but does not include (I) an alien who fails to apply for naturalization within six months of the date the alien first becomes eligible (by virtue of period of lawful permanent residence) to apply for naturalization or, if later, within six months after the date of the enactment of this section and (II) an alien who has applied on a timely basis, but has not been naturalized as a citizen within 2 years after the date of the application, unless the alien can establish that the alien is actively pursuing naturalization, except that time consumed in the Service's processing the application shall not be counted toward the 2-year period.

(b) CHARGES OF VIOLATIONS.—

(1) IN GENERAL.—Except as provided in paragraph (2), any person alleging that the person is adversely affected directly by an unfair immigration-related employment practice or an officer of the Service alleging that an unfair immigration-related employment practice has occurred or is occurring may file a charge respecting such practice or violation with the Special Counsel (appointed under subsection (c)). Charges shall be in writing under oath or affirmation and shall contain such information as the Attorney General requires. The person filing a charge shall serve a notice of the charge (including the date, place, and circumstances of the alleged unfair immigration-related employment practice) on the person or entity involved within 10 days.

(2) NO OVERLAP WITH EEOC COMPLAINTS.—No charge may be filed respecting an unfair immigration-related employment practice described in subsection (a)(1)(A) if a charge with respect to that practice based on the same set of facts has been filed with the Equal Employment Opportunity Commission under title VII of the Civil Rights Act of 1964, unless the charge is dismissed as being outside the scope of such title. No charge respecting an employment practice may be filed with the Equal Employment Opportunity Commission under such title if a charge with respect to such practice based on the same set of facts has been filed under this subsection, unless the charge is dismissed under this section as being outside the scope of this section.

(c) SPECIAL COUNSEL.—

(1) APPOINTMENT.—The President shall appoint, by and with the advice and consent of the Senate, a Special Counsel for Immigration-Related Unfair Employment Practices (hereinafter in this section referred to as the "Special Counsel") within the Department of Justice to serve for a term of four years. In the case of a vacancy in the office of the Special Counsel the President

may designate the officer or employee who shall act as Special Counsel during such vacancy.

(2) DUTIES.—The Special Counsel shall be responsible for investigation of charges and issuance of complaints under this section and in respect of the prosecution of all such complaints before administrative law judges and the exercise of certain functions under subsection (i)(1).

(3) COMPENSATION.—The Special Counsel is entitled to receive compensation at the rate now or hereafter provided for grade GS–17 of the General Schedule, under section 5332 of title 5, United States Code.

(4) REGIONAL OFFICES.—The Special Counsel, in accordance with regulations of the Attorney General, shall establish such regional offices as may be necessary to carry out his duties.

(d) INVESTIGATION OF CHARGES.—

(1) BY SPECIAL COUNSEL.—The Special Counsel shall investigate each charge received and, within 120 days of the date of the receipt of the charge, determine whether or not there is reasonable cause to believe that the charge is true and whether or not to bring a complaint with respect to the charge before an administrative law judge. The Special Counsel may, on his own initiative, conduct investigations respecting unfair immigration-related employment practices and, based on such an investigation and subject to paragraph (3), file a complaint before such a judge.

(2) PRIVATE ACTIONS.—If the Special Counsel, after receiving such a charge respecting an unfair immigration-related employment practice which alleges knowing and intentional discriminatory activity or a pattern or practice of discriminatory activity, has not filed a complaint before an administrative law judge with respect to such charge within such 120-day period, the person making the charge may (subject to paragraph (3)) file a complaint directly before such a judge.

(3) TIME LIMITATIONS ON COMPLAINTS.—No complaint may be filed respecting any unfair immigration-related employment practice occurring more than 180 days prior to the date of the filing of the charge with the Special Counsel and the service of a copy thereof upon the person or entity against whom such charge is made. This subparagraph shall not prevent the subsequent amending of a charge or complaint under subsection (e)(1).

(e) HEARINGS.—

(1) NOTICE.—Whenever a complaint is made that a person or entity has engaged in or is engaging in any such unfair immigration-related employment practice, an administrative law judge shall have power to issue and cause to be served upon such person or entity a copy of the complaint and a notice of hearing before the judge at a place therein fixed, not less than five days after the serving of the complaint. Any such complaint may be amended by the judge conducting the hearing in the judge's discretion at any time prior to the issuance of an order based thereon. The person or entity so complained of shall have the right to file an answer to the original or amended

complaint and to appear in person or otherwise and give testimony at the place and time fixed in the complaint.

(2) JUDGES HEARING CASES.—Hearings on complaints under this subsection shall be considered before administrative law judges who are specially designated by the Attorney General as having special training respecting employment discrimination and, to the extent practicable, before such judges who only consider cases under this section.

(3) COMPLAINANT AS PARTY.—Any person filing a charge with the Special Counsel respecting an unfair immigration-related employment practice shall be considered a full party to any complaint before an administrative law judge respecting such practice and any subsequent appeal respecting that complaint. In the discretion of the judge conducting the hearing, any other person may be allowed to intervene in the said proceeding and to present testimony.

(f) TESTIMONY AND AUTHORITY OF HEARING OFFICERS.—

(1) TESTIMONY.—The testimony taken by the administrative law judge shall be reduced to writing. Thereafter, the judge, in his discretion, upon notice may provide for the taking of further testimony or hear argument.

(2) AUTHORITY OF ADMINISTRATIVE LAW JUDGES.—In conducting investigations and hearings under this subsection and in accordance with regulations of the Attorney General, the Special Counsel and administrative law judges sha!l have reasonable access to examine evidence of any person or entity being investigated. The administrative law judges by subpoena may compel the attendance of witnesses and the production of evidence at any designated place or hearing. In case of contumacy or refusal to obey a subpoena lawfully issued under this paragraph and upon application of the administrative law judge, an appropriate district court of the United States may issue an order requiring compliance with such subpoena and any failure to obey such order may be punished by such court as a contempt thereof.

(g) DETERMINATIONS.—

(1) ORDER.—The administrative law judge shall issue and cause to be served on the parties to the proceeding an order.

(2) ORDERS FINDING VIOLATIONS.—

(A) IN GENERAL.—If, upon the preponderance of the testimony taken, an administrative law judge determines that that any person or entity named in the complaint has engaged in or is engaging in any such unfair immigration-related employment practice, then the judge shall state his findings of fact and shall issue and cause to be served on such person or entity an order which requires such person or entity to cease and desist from such unfair immigration-related employment practice.

(B) CONTENTS OF ORDER.—Such an order also may require the person or entity—

(i) to comply with the requirements of section 274A(b) with respect to individuals hired (or recruited or referred for employment for a fee) during a period of up to three years;

(ii) to retain for the period referred to in clause (i) and only for purposes consistent with section 274A(b)(6), the name and address of each individual who applies, in person or in writing, for hiring for an existing position, or for recruiting or referring for a fee, for employment in the United States;

(iii) to hire individuals directly and adversely affected, with or without back pay; and

(iv)(I) except as provided in subclause (II), to pay a civil penalty of not more than $1,000 for each individual discriminated against, and

(II) in the case of a person or entity previously subject to such an order, to pay a civil penalty of not more than $2,000 for each individual discriminated against.

(C) LIMITATION ON BACK PAY REMEDY.—In providing a remedy under subparagraph (B)(iii), back pay liability shall not accrue from a date more than two years prior to the date of the filing of a charge with an administrative law judge. Interim earnings or amounts earnable with reasonable diligence by the individual or individuals discriminated against shall operate to reduce the back pay otherwise allowable under such paragraph. No order shall require the hiring of an individual as an employee or the payment to an individual of any back pay, if the individual was refused employment for any reason other than discrimination on account of national origin or citizenship status.

(D) TREATMENT OF DISTINCT ENTITIES.—In applying this subsection in the case of a person or entity composed of distinct, physically separate subdivisions each of which provides separately for the hiring, recruiting, or referring for employment, without reference to the practices of, and not under the control of or common control with, another subdivision, each such subdivision shall be considered a separate person or entity.

(3) ORDERS NOT FINDING VIOLATIONS.—If upon the preponderance of the testimony taken an administrative law judge determines that the person or entity named in the complaint has not engaged or is not engaging in any such unfair immigration-related employment practice, then the judge shall state his findings of fact and shall issue an order dismissing the complaint.

(h) AWARDING OF ATTORNEYS' FEES.—In any complaint respecting an unfair immigration-related employment practice, an administrative law judge, in the judge's discretion, may allow a prevailing party, other than the United States, a reasonable attorney's fee.

(i) APPLICATION OF CERTAIN NLRB PROCEDURES.—

(1) IN GENERAL.—The provisions of subsections (d), (e), (f), (g), and (j) of section 10 of the National Labor Relations Act (29 U.S.C. 160) shall apply to court petitions and review of orders under this section in the same manner as they apply to court petitions and orders under that section, except that—

(A) the authority of the General Counsel or the National Labor Relations Board under subsections (d), (f), and (g) and the second through seventh sentences of subsection (e) shall be exercised for purposes of this paragraph through

the Special Counsel or the administrative law judge involved, respectively, and

(B) the authority of the National Labor Relations Board under subsection (j) and the first sentence of subsection (e) shall be exercised for purposes of this paragraph through the Special Counsel.

(2) AWARDING OF ATTORNEYS' FEES.—In any proceeding referred to in paragraph (1), the court, in its discretion, may allow a prevailing party, other than the United States, a reasonable attorney's fee as part of costs.

* * * * * * *

AUTHORIZATION OF APPROPRIATIONS

SEC. 404. *(a)* There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act (other than chapter 2 of title IV).

(b) There are authorized to be appropriated to an immigration emergency fund, to be established in the Treasury, $35,000,000, to be used in accordance with the immigration contingency plan developed under section 103(c) to provide for an increase in border patrol or other enforcement activities of the Service and for reimbursement of State and localities in providing assistance as requested by the Attorney General in meeting an immigration emergency, except that no amounts may be withdrawn from such funds with respect to an emergency unless the President has determined that the immigration emergency exists and has certified such fact to the Judiciary Committees of the House of Representatives and of the Senate.

* * * * * * *

TITLE 18, UNITED STATES CODE

CHAPTER 75—PASSPORTS AND VISAS

Sec.
1541. Issuance without authority.
1542. False statement in application and use of passport.
1543. Forgery or false use of passport.
1544. Misuse of passport.
1545. Safe conduct violation.
[1546. Fraud and misuse of visas, permits and other entry documents.]
1546. Fraud and misuse of visas, permits, and other documents.

[§ 1546. Fraud and misuse of visas, permits, and other entry documents]

§ 1546. Fraud and misuse of visas, permits, and other documents

Whoever knowingly forges, counterfeits, alters, or falsely makes any immigrant or nonimmigrant visa, permit, [or other document required for entry into the United States], *border crossing card, alien registration receipt card, or other document prescribed by statute or regulation for entry into or as evidence of authorized stay or employment in the United States* or utters, uses, attempts to use,

possesses, obtains, accepts, or receives any such visa, permit, [or document], *border crossing card, alien registration receipt card, or other document prescribed by statute or regulation for entry into or as evidence of authorized stay or employment in the United States* knowing it to be forged, counterfeited, altered, or falsely made, or to have been procured by means of any false claim or statement, or to have been otherwise procured by fraud or unlawfully obtained; or

Whoever, except under direction of the Attorney General or the Commissioner of the Immigration and Naturalization Service, or other proper officer, knowingly possesses any blank permit, or engraves, sells, brings into the United States, or has in his control or possession any plate in the likeness of a plate designed for the printing of permits, or makes any print, photograph, or impression in the likeness of any immigrant or nonimmigrant visa, permit or other document required for entry into the United States, or has in his possession a distinctive paper which has been adopted by the Attorney General or the Commissioner of the Immigration and Naturalization Service for the printing of such visas, permits, or documents; or

Whoever, when applying for an immigrant or nonimmigrant visa, permit, or other document required for entry into the United States, or for admission to the United States personates an other, or falsely appears in the name of a deceased individual, or evades or attempts to evade the immigration laws by appearing under an assumed or fictitious name without disclosing his true identity, or sells or otherwise disposes of, or offers to sell or otherwise dispose of, or utters, such visa, permit, or other document, to any person not authorized by law to receive such document; or

(*a*) Whoever knowingly makes under oath, or as permitted under penalty of perjury under section 1746 of title 28, United States Code, knowingly subscribes as true, any false statement with respect to a material fact in any application, affidavit, or other document required by the immigration laws or regulations prescribed thereunder, or knowingly presents any such application, affidavit, or other document containing any such false statement—

Shall be fined not more than [$2,000], *$5,000* or imprisoned not more than five years, or both.

(b) Whoever uses—

(1) an identification document, knowing (or having reason to know) that the document was not issued lawfully for the use of the possessor,

(2) an identification document, knowing (or having reason to know) that the document is false, or

(3) a false attestation,

for the purpose of satisfying a requirement of section 274A(b) of the Immigration and Nationality Act, shall be fined not more than $5,000, or imprisoned not more than two years, or both.

(c) This section does not prohibit any lawfully authorized investigative, protective, or intelligence activity of a law enforcement agency of the United States, a State, or a subdivision of a State, or of an intelligence agency of the United States, or any activity authorized under title V of the Organized Crime Control Act of 1970 (18 U.S.C. note prec. 3481).

MIGRANT AND SEASONAL AGRICULTURAL WORKER PROTECTION ACT

AN ACT To provide for the protection of migrant and seasonal agricultural workers and for the registration of contractors of migrant and seasonal agricultural labor and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE; TABLE OF CONTENTS

SECTION 1. This Act, together with the following table of contents, may be cited as the "Migrant and Seasonal Agricultural Worker Protection Act".

TABLE OF CONTENTS

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[Sec. 106. Prohibition against employing illegal aliens.]

TITLE II—MIGRANT AGRICULTURAL WORKER PROTECTIONS

Sec. 201. Information and recordkeeping requirements.
Sec. 202. Wages, supplies, and other working arrangements.
Sec. 203. Safety and health of housing.

TITLE III—SEASONAL AGRICULTURAL WORKER PROTECTIONS

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* * * * * * *

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SEC. 3. As used in this Act—

(1) * * *

* * * * * * *

(8)(A) Except as provided in subparagraph (B), the term "migrant agricultural worker" means an individual who is employed in agricultural employment of a seasonal or other temporary nature, and who is required to be absent overnight from his permanent place of residence.

(B) The term "migrant agricultural worker" does not include—

(i) any immediate family member of an agricultural employer or a farm labor contractor; or

(ii) any temporary nonimmigrant alien who is authorized to work in agricultural employment in the United States under sections [101(a)(15)(H)(ii)] *101(a)(15)(H)(ii)(a)* and 214(c) of the Immigration and Nationality Act

* * * * * * *

(10)(A) Except as provided in subparagraph (B), the term "seasonal agricultural worker" means an individual who is employed in agricultural employment of a seasonal or other temporary nature and is not required to be absent overnight from his permanent place of residence—

(i) when employed on a farm or ranch performing field work related to planting, cultivating, or harvesting operations; or

(ii) when employed in canning, packing, ginning, seed conditioning or related research, or processing operations, and transported, or caused to be transported, to or from the place of employment by means of a day-haul operation.

(B) The term "seasonal agricultural worker" does not include—

(i) any migrant agricultural worker;

(ii) any immediate family member of an agricultural employer or a farm labor contractor; or

(iii) any temporary nonimmigrant alien who is authorized to work in agricultural employment in the United States under sections [101(a)(15)(H)(ii)] *101(a)(15)(H)(ii)(a)* and 214(c) of the Immigration and Nationality Act.

* * * * * * *

TITLE I—FARM LABOR CONTRACTORS

* * * * * * *

SEC. 103. (a) In accordance with regulations, the Secretary may refuse to issue or renew, or may suspend or revoke, a certificate of registration (including a certificate of registration as an employee of a farm labor contractor) if the applicant or holder—

(1) * * *

* * * * * * *

(4) has failed—

(A) to pay any court judgment obtained by the Secretary or any other person under this Act or any regulation

under this Act or under the Farm Labor Contractor Registration Act of 1963 or any regulation under such Act, or

(B) to comply with any final order issued by the Secretary as a result of a violation of this Act or any regulation under this Act or a violation of the Farm Labor Contractor Registration Act of 1963 or any regulation under such Act; [or]

(5) has been convicted within the preceding five years—

(A) of any crime under State or Federal law relating to gambling, or to the sale, distribution or possession of alcoholic beverages, in connection with or incident to any farm labor contracting activities; or

(B) of any felony under State or Federal law involving robbery, bribery, extortion, embezzlement, grand larceny, burglary, arson, violation of narcotics laws, murder, rape, assault with intent to kill, assault which inflicts grievous bodily injury, prostitution, peonage, or smuggling or harboring individuals who have entered the United States illegally[.] ; *or*

(6) has been found to have violated paragraph (1) or (2) of section 274A(a) of the Immigration and Nationality Act.

* * * * * * *

[SEC. 106.(a) No farm labor contractor shall recruit, hire, employ, or use, with knowledge, the services of any individual who is an alien not lawfully admitted for permanent residence or who has not been authorized by the Attorney General to accept employment.

[(b) A farm labor contractor shall be considered to have complied with subsection (a) if the farm labor contractor demonstrates that the farm labor contractor relied in good faith on documentation prescribed by the Secretary, and the farm labor contractor had no reason to believe the individual was an alien referred to in subsection (a).]

TITLE V—GENERAL PROVISIONS

PART A—ENFORCEMENT PROVISIONS

CRIMINAL SANCTIONS

SEC. 501. (a) Any person who willfully and knowingly violates this Act or any regulation under this Act shall be fined not more than $1,000 or sentenced to prison for a term not to exceed one year, or both. Upon conviction for any subsequent violation of this Act or any regulation under this Act, the defendant shall be fined not more than $10,000 or sentenced to prison for a term not to exceed three years or both.

(b) If a farm labor contractor who commits a violation of [section 106] *paragraph (1) or (2) of section 274A(a) of the Immigration and Nationality Act* has been refused issuance or renewal of, or has failed to obtain, a certificate of registration or is a farm labor contractor whose certificate has been suspended or revoked, the

contractor shall, upon conviction, be fined not more than $10,000 or sentenced to prison for a term not to exceed three years, or both.

* * * * * * *

SOCIAL SECURITY ACT

* * * * * * *

PAYMENT TO STATES

SEC. 3. (a) From the sums appropriated therefor, the Secretary of the Treasury shall pay to each State which has a plan approved under this title, for each quarter, beginning with the quarter commencing October 1, 1960—

(2) in the case of Puerto Rico, the Virgin Islands, and Guam, an amount equal to one-half of the total of the sums expended during such quarter as old-age assistance under the State plan, not counting so much of any expenditure with respect to any month as exceeds $37.50 multiplied by the total number of recipients of old-age assistance for such month; plus

(4) in the case of any State, an amount equal to the sum of the following proportions of the total amounts expended during such quarter as found necessary by the Secretary of Health and Human Services for the proper and efficient administration of the State plan—

(A) 75 per centum of so much of such expenditures as are for the training (including both short- and long-term training at educational institutions through grants to such institutions or by direct financial assistance to students enrolled in such institutions) of personnel employed or preparing for employment by the State agency or by the local agency administering the plan in the political subdivision; plus

(B) 100 percent of so much of such expenditures as are for the costs of the implementation and operation of the immigration status verification system described in section 1137(d); plus

[(B)] *(C)* one-half of the remainder of such expenditures.

* * * * * * *

TITLE III—GRANTS TO STATES FOR UNEMPLOYMENT COMPENSATION ADMINISTRATION

* * * * * * *

PAYMENTS TO STATES

SEC. 302. (a) The Secretary of Labor shall from time to time certify to the Secretary of the Treasury for payment to each State which has an unemployment compensation law approved by the Secretary of Labor under the Federal Unemployment Tax Act, such amounts as the Secretary of Labor determines to be necessary for the proper and efficient administration of such law during the

fiscal year for which such payment is to be made, *including 100 percent of so much of the reasonable expenditures of the State as are attributable to the costs of the implementation and operation of the immigration status verification system described in section 1137(d).* The Secretary of Labor's determination shall be based on (1) the population of the State; (2) an estimate of the number of persons covered by the State law and of the cost of proper and efficient administration of such law; and (3) such other factors as the Secretary of Labor finds relevant. The Secretary of Labor shall not certify for payment under this section in any fiscal year a total amount in excess of the amount appropriated therefor for such fiscal year.

* * * * * * *

TITLE IV—GRANTS TO STATES FOR AID AND SERVICES TO NEEDY FAMILIES WITH CHILDREN AND FOR CHILD-WELFARE SERVICES

* * * * * * *

PART A—AID TO FAMILIES WITH DEPENDENT CHILDREN

* * * * * * *

PAYMENT TO STATES

SEC. 403. (a) From the sums appropriated therefor, the Secretary of the Treasury shall pay to each State which has an approved plan for aid and services to needy families with children, for each quarter, beginning with the quarter commencing October 1, 1958—

(1) * * *

* * * * * * *

(3) in the case of any State, an amount equal to the sum of the following proportions of the total amounts expended during such quarter as found necessary by the Secretary for the proper and efficient administration of the State plan—

(A) 100 percent of so much of such expenditures as are for the costs of the implementation and operation of the immigration status verification system described in section 1137(d),

* * * * * * *

TITLE X—GRANTS TO STATES FOR AID TO THE BLIND

* * * * * * *

PAYMENT TO STATES

SEC. 1003. (a) From the sums appropriated therefor, the Secretary of the Treasury shall pay to each State which has an approved plan for aid to the blind, for each quarter, beginning with the quarter commencing October 1, 1958—

* * * * * * *

(3) in the case of any State, an amount equal to the sum of the following proportions of the total amounts expended during

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such quarter as found necessary by the Secretary of Health and Human Services for the proper and efficient administration of the State plan—

(A) 75 per centum of so much of such expenditures as are for the training (including both short- and long-term training at educational institutions through grants to such institutions or by direct financial assistance to students enrolled in such institutions) of personnel employed or preparing for employment by the State agency or by the local agency administering the plan in the political subdivision; plus

(B) 100 percent of so much of such expenditures as are for the costs of the implementation and operation of the immigration status verification system described in section 1137(d); plus

[(B)] *(C)* one-half of the remainder of such expenditures.

* * * * * * *

TITLE XI—GENERAL PROVISIONS AND PEER REVIEW

* * * * * * *

PART A—GENERAL PROVISIONS

* * * * * * *

INCOME AND ELIGIBILITY VERIFICATION SYSTEM

SEC. 1137. (a) In order to meet the requirements of this section, a State must have in effect an income and eligibility verification system *which meets the requirements of subsection (d) and* under which—

(1) the State shall require, as a condition of eligibility for benefits under any program listed in subsection (b), that each applicant for or recipient of benefits under that program furnish to the State his social security account number (or numbers, if he has more than one such number), and the State shall utilize such account numbers in the administration of that program so as to enable the association of the records pertaining to the applicant or recipient with his account number;

* * * * * * *

(b) The programs which must participate in the income *and eligibility* verification system are—

(1) the aid to families with dependent children program under part A of title IV of this Act;

(2) the medicaid program under title XIX of this Act;

(3) the unemployment compensation program under section 3304 of the Internal Revenue Code of 1954;

(4) the food stamp program under the Food Stamp Act of 1977; and

(5) any State program under a plan approved under title I, X, XIV, or XVI of this Act.

* * * * * * *

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(d) The requirements of this subsection, with respect to an income and eligibility verification system of a State, are as follows:

(1)(A) The State shall require, as a condition of an individual's eligibility for benefits under any program listed in subsection (b), a declaration in writing by the individual (or, in the case of an individual who is a child, by another on the individual's behalf), under penalty of perjury, stating whether or not the individual is a citizen or national of the United States and, if that individual is not a citizen or national of the United States, that the individual is in a satisfactory immigration status.

(B) In this subsection—

(i) in the case of the program described in subsection (b)(1), any reference to an individual's eligibility for benefits under the program shall be considered a reference to the individual's being considered a dependent child or to the individual's being treated as a caretaker relative or other person whose needs are to be taken into account in making the determination under section 402(a)(7),

(ii) in the case of the program described in subsection (b)(4)—

(I) any reference to the State shall be considered a reference to the State agency, and

(II) any reference to an individual's eligibility for benefits under the program shall be considered a reference to the individual's eligibility to participate in the program as a member of a household, and

(III) the term "satisfactory immigration status" means an immigration status which does not make the individual ineligible for benefits under the applicable program.

(2) If such an individual is not a citizen or national of the United States, there must be presented either—

(A) alien registration documentation or other proof of immigration registration from the Immigration and Naturalization Service that contains the individual's alien admission number or alien file number (or numbers if the individual has more than one number), or

(B) such other documents as the State determines constitutes reasonable evidence indicating a satisfactory immigration status.

(3) If the documentation described in paragraph (2)(A) is presented, the State shall utilize the individual's alien file or alien admission number to verify with the Immigration and Naturalization Service the individual's immigration status through an automated or other system (designated by the Service for use with States) that—

(A) utilizes the individual's name, file number, admission number, or other means permitting efficient verification, and

(B) protects the individual's privacy to the maximum degree possible.

(4) In the case of such an individual who is not a citizen or national of the United States, if, at the time of application for

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benefits, the statement described in paragraph (1) is submitted but the documentation required under paragraph (2) is not presented or if the documentation required under paragraph (2)(A) is presented but such documentation is not verified under paragraph (3)—

(A) the State—

(i) shall provide a reasonable opportunity to submit to the State evidence indicating a satisfactory immigration status, and

(ii) may not delay, deny, reduce, or terminate the individual's eligibility for benefits under the program on the basis of the individual's immigration status until such a reasonable opportunity has been provided; and

(B) if there are submitted documents which the State determines constitutes reasonable evidence indicating such status—

(i) the State shall transmit to the Immigration and Naturalization Service photostatic or other similar copies of such documents for official verification,

(ii) pending such verification, the State may not delay, deny, reduce, or terminate the individual's eligibility for benefits under the program on the basis of the individual's immigration status, and

(iii) the State shall not be liable for the consequences of any action, delay, or failure of the Service to conduct such verification.

(5) If the State determines, after complying with the requirements of paragraph (4), that such an individual is not in a satisfactory immigration status under the applicable program—

(A) the State shall deny or terminate the individual's eligibility for benefits under the program, and

(B) the applicable fair hearing process shall be made available with respect to the individual.

(e) Each Federal agency responsible for administration of a program described in subsection (b) shall not take any compliance, disallowance, penalty, or other regulatory action against a State with respect to any error in the State's determination to make an individual eligible for benefits based on citizenship or immigration status—

(1) if the State has provided such eligibility based on a verification of satisfactory immigration status by the Immigration and Naturalization Service,

(2) because the State, under subsection (d)(4)(A)(ii), was required to provide a reasonable opportunity to submit documentation,

(3) because the State, under subsection (d)(4)(B)(ii), was required to wait for the response of the Immigration and Naturalization Service to the State's request for official verification of the immigration status of the individual, or

(4) because of a fair hearing process described in subsection (d)(5)(B).

* * * * * * *

TITLE XIV—GRANTS TO STATES FOR AID TO THE PERMANENTLY AND TOTALLY DISABLED

* * * * * * *

PAYMENTS TO STATES

SEC. 1403. (a) From the sums appropriated therefor, the Secretary of the Treasury shall pay to each State which has an approved plan for aid to the permanently and totally disabled, for each quarter, beginning with the quarter commencing October 1, 1958—

* * * * * * *

(3) in the case of any State, an amount equal to the sum of the following proportions of the total amounts expended during such quarter as found necessary by the Secretary of Health and Human Services for the proper and official administration of the State plan—

(A) 75 per centum of so much of such expenditures as are for the training (including both short- and long-term training at educational institutions through grants to such institutions or by direct financial assistance to students enrolled in such institutions) of personnel employed or preparing for employment by the State agency or by the local agency administering the plan in the political subdivision; plus

* * * * * * *

(B) 100 percent of so much of such expenditures as are for the costs of the implementation and operation of the immigration status verification system described in section 1137(d); plus

[B**]** *(C)* one-half of the remainder of such expenditures.

* * * * * * *

TITLE XVI—GRANTS TO STATES FOR AID TO THE AGED, BLIND, OR DISABLED

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PAYMENTS TO STATES

SEC. 1603. (a) From the sums appropriated therefor, the Secretary shall pay to each State which has a plan approved under this title, for each quarter, beginning with the quarter commencing October 1, 1962—

* * * * * * *

(4) in the case of any State, an amount equal to the sum of the following proportions of the total amounts expended during such quarter as found necessary by the Secretary of Health and Human Services for the proper and efficient administration of the State plan—

(A) 75 per centum of so much of such expenditures as are for the training (including both short- and long-term training at educational institutions through grants to such

institutions or by direct financial assistance to students enrolled in such institutions) of personnel employed or preparing for employment by the State agency or by the local agency administering the plan in the political subdivision; plus

* * * * * * *

(B) 100 percent of so much of such expenditures as are for the costs of the implementation and operation of the immigration status verification system described in section 1137(d); plus

[B] *(C)* one-half of the remainder of such expenditures.

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TITLE XVI—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED

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PART B—PROCEDURAL AND GENERAL PROVISIONS

PAYMENTS AND PROCEDURES

Payment of Benefits

SEC. 1631. (a) * * *

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Applications and Furnishing of Information

(e)(1)(A) The Secretary shall, subject to subparagraph (B), prescribe such requirements with respect to the filing of applications, the suspension or termination of assistance, the furnishing of other data and material, and the reporting of events and changes in circumstances, as may be necessary for the effective and efficient administration of this title.

(B) The requirements prescribed by the Secretary pursuant to subparagraph (A) shall require that eligibility for benefits under this title will not be determined solely on the basis of declarations by the applicant concerning eligibility factors or other relevant facts, and that relevant information will be verified from independent or collateral sources and additional information obtained as necessary in order to assure that such benefits are only provided to eligible individuals (or eligible spouses) and that the amounts of such benefits are correct. For this purpose and for purposes of federally administered supplementary payments of the type described in section 1616(a) of this Act (including payments pursuant to an agreement entered into under section 212(a) of Public Law 93-66), the Secretary shall, as may be necessary, request and utilize information available pursuant to section 6103(l)(7) of the Internal Revenue Code of 1954, and any information which may be available from State systems under section 1137 of this Act, and shall comply with the requirements applicable to States (with respect to infor-

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mation available pursuant to section 6103(l)(7)(B) of such Code) under subsections (a)(6) [and (c)], *(c), and (d)* of such section 1137.

* * * * * * *

TITLE XIX—GRANTS TO STATES FOR MEDICAL ASSISTANCE PROGRAMS

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PAYMENT TO STATES

SEC. 1903. (a) From the sums appropirated therefor, the Secretary (except as otherwise provided in this section) shall pay to each State which has a plan approved under this title, for each quarter, beginning with the quarter commencing January 1, 1966—

(1) * * *

* * * * * * *

(4) an amount equal to 100 percent of the sums expended during the quarter which are attributable to the costs of the implementation and operation of the immigration status verification system described in section 1137(d); plus

* * * * * * *

SECTION 214 OF THE HOUSING AND COMMUNITY DEVELOPMENT ACT OF 1980

RESTRICTION ON USE OF ASSISTED HOUSING

SEC. 214.[1] (a) * * *

* * * * * * *

(d) The following conditions apply with respect to financial assistance being provided for the benefit of an individual:

(1)(A) There must be a declaration in writing by the individual (or, in the case of an individual who is a child, by another on the individual's behalf), under penalty of perjury, stating whether or not the individual is a citizen or national of the United States, and, if that individual is not a citizen or national of the United States, that the individual is in a satisfactory immigration status.

(B) In this subsection, the term "satisfactory immigration status" means an immigration status which does not make the individual ineligible for financial assistance.

(2) If such an individual is not a citizen or national of the United States, there must be presented either—

(A) alien registration documentation or other proof of immigration registration from the Immigration and Naturalization Service that contains the individual's alien admission number or alien file number (or numbers if the individual has more than one number), or

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(B) such other documents as the Secretary determines constitutes reasonable evidence indicating a satisfactory immigration status.

(3) If the documentation described in paragraph (2)(A) is presented, the Secretary shall utilize the individual's alien file or alien admission number to verify with the Immigration and Naturalization Service the individual's immigration status through an automated or other system (designated by the Service for use with States) that—

(A) utilizes the individual's name, file number, admission number, or other means permitting efficient verification, and

(B) protects the individual's privacy to the maximum degree possible.

(4) In the case of such an individual who is not a citizen or national of the United States, if, at the time of application for financial assistance, the statement described in paragraph (1) is submitted but the documentation required under paragraph (2) is not presented or if the documentation required under paragraph (2)(A) is presented but such documentation is not verified under paragraph (3)—

(A) the Secretary—

(i) shall provide a reasonable opportunity to submit to the Secretary evidence indicating a satisfactory immigration status, and

(ii) may not delay, deny, reduce, or terminate the individual's eligibility for financial assistance on the basis of the individual's immigration status until such a reasonable opportunity has been provided; and

(B) if there are submitted documents which the Secretary determines constitutes reasonable evidence indicating such status—

(i) the Secretary shall transmit to the Immigration and Naturalization Service photostatic or other similar copies of such documents for official verification,

(ii) pending such verification, the Secretary may not delay, deny, reduce, or terminate the individual's eligibility for financial assistance on the basis of the individual's immigration status, and

(iii) the Secretary shall not be liable for the consequences of any action, delay, or failure of the Service to conduct such verification.

(5) If the Secretary determines, after complying with the requirements of paragraph (4), that such an individual is not in a satisfactory immigration status—

(A) the Secretary shall deny or terminate the individual's eligibility for financial assistance, and

(B) the applicable fair hearing process shall be made available with respect to the individual.

In this subsection and subsection (e), the term "Secretary" refers to the Secretary and to a public housing authority or other entity which makes financial assistance available.

(e) The Secretary shall not take any compliance, disallowance, penalty, or other regulatory action against an entity with respect to

any error in the entity's determination to make an individual eligible for financial assistance based on citizenship or immigration status—

(1) if the entity has provided such eligibility based on a verification of satisfactory immigration status by the Immigration and Naturalization Service,

(2) because the entity, under subsection (d)(4)(A)(ii), was required to provide a reasonable opportunity to submit documentation,

(3) because the entity, under subsection (d)(4)(B)(ii), was required to wait for the response of the Immigration and Naturalization Service to the entity's request for official verification of the immigration status of the individual, or

(4) because of a fair hearing process described in subsection (d)(5)(B).

SECTION 484 HIGHER EDUCATION ACT OF 1965

TITLE IV—STUDENT ASSISTANCE

* * * * * * *

SEC. 484. (a) * * *

* * * * * * *

(c) The following conditions apply with respect to an individual's receipt of any grant, loan, or work assistance under this title as a student at an institution of higher education:

(1)(A) There must be a declaration in writing to the institution by the student, under penalty of perjury, stating whether or not the student is a citizen or national of the United States, and, if the student is not a citizen or national of the United States, that the individual is in a satisfactory immigration status.

(B) In this subsection, the term "satisfactory immigration status" means an immigration status which does not make the student ineligible for a grant, loan, or work assistance under this title.

(2) If the student is not a citizen or national of the United States, there must be presented to the institution either—

(A) alien registration documentation or other proof of immigration registration from the Immigration and Naturalization Service that contains the individual's alien admission number or alien file number (or numbers if the individual has more than one number), or

(B) such other documents as the institution determines (in accordance with guidelines of the Secretary) constitutes reasonable evidence indicating a satisfactory immigration status.

(3) If the documentation described in paragraph (2)(A) is presented, the institution shall utilize the individual's alien file or alien admission number to verify with the Immigration and Naturalization Service the individual's immigration status through an automated or other system (designated by the Service for use with institutions) that—

(A) utilizes the individual's name, file number, admission number, or other means permitting efficient verification, and

(B) protects the individual's privacy to the maximum degree possible.

(4) In the case of such an individual who is not a citizen or national of the United States, if the statement described in paragraph (1) is submitted but the documentation required under paragraph (2) is not presented or if the documentation required under paragraph (2)(A) is presented but such documentation is not verified under paragraph (3)—

(A) the institution—

(i) shall provide a reasonable opportunity to submit to the institution evidence indicating a satisfactory immigration status, and

(ii) may not delay, deny, reduce, or terminate the individual's eligibility for the grant, loan, or work assistance on the basis of the individual's immigration status until such a reasonable opportunity has been provided; and

(B) if there are submitted documents which the institution determines constitutes reasonable evidence indicating such status—

(i) the institution shall transmit to the Immigration and Naturalization Service photostatic or other similar copies of such documents for official verification,

(ii) pending such verification, the institution may not delay, deny, reduce, or terminate the individual's eligibility for the grant, loan, or work assistance on the basis of the individual's immigration status, and

(iii) the institution shall not be liable for the consequences of any action, delay, or failure of the Service to conduct such verification.

(5) If the institution determines, after complying with the requirements of paragraph (4), that such an individual is not in a satisfactory immigration status—

(A) the institution shall deny or terminate the individual's eligibility for such grant, loan, or work assistance, and

(B) the applicable fair hearing process shall be made available with respect to the individual.

(d) The Secretary shall not take any compliance, disallowance, penalty, or other regulatory action against an institution of higher education with respect to any error in the institution's determination to make a student eligible for a grant, loan, or work assistance based on citizenship or immigration status—

(1) if the institution has provided such eligibility based on a verification of satisfactory immigration status by the Immigration and Naturalization Service,

(2) because the institution, under subsection (c)(4)(A)(ii), was required to provide a reasonable opportunity to submit documentation,

(3) because the institution, under subsection (c)(4)(B)(ii), was required to wait for the response of the Immigration and Natu-

ralization Service to the institution's request for official verification of the immigration status of the student, or

(4) because of a fair hearing process described in subsection (c)(5)(B).

SECTION 16 OF THE FOOD STAMP ACT OF 1977

SEC. 16. (a) * * *

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(h) The Secretary is authorized to pay to each State agency an amount equal to 100 per centum of the costs incurred by the State agency in implementing and operating the immigration status verification system described in section 1137(d) of the Social Security Act.

UNITED STATES HOUSING ACT OF 1937

SECTION 1. This Act may be cited as the "United States Housing Act of 1937".

* * * * * * *

PAYMENT FOR IMPLEMENTATION OF IMMIGRATION STATUS VERIFICATION SYSTEM

SEC. 20. The Secretary is authorized to pay to each public housing authority an amount equal to 100 percent of the costs incurred by the authority in implementing and operating the immigration status verification system under section 214(c) of the Housing and Community Development Act of 1980 with respect to financial assistance made available pursuant to this Act

Internal Revenue Code of 1954

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EMPLOYMENT TAX—EMPLOYEES

Subtitle C—Employment Taxes and Collection of Income Tax at Source

* * * * * * *

CHAPTER 23—FEDERAL UNEMPLOYMENT TAX ACT

Sec. 3301. Rate of tax.
Sec. 3302. Credits against tax.
Sec. 3303. Conditions of additional credit allowance.
Sec. 3304. Approval of State laws.
Sec. 3305. Applicability of State law.
Sec. 3306. Definitions.
Sec. 3307. Deductions as constructive payments.

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SEC. 3231(i) * * *

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SEC. 3306. DEFINITIONS. * * *

* * * * * * *

(c) EMPLOYMENT—For purposes of this chapter, the term "employment" means any service performed prior to 1955, which was employment for purposes of subchapter C of chapter 9 of the Internal Revenue Code of 1939 under the law applicable to the period in which such service was performed, and (A) any service, of whatever nature, performed after 1954 by an employee for the person employing him, irrespective of the citizenship or residence of either, (i) within the United States, or (ii) on or in connection with an American vessel or American aircraft under a contract of service which is entered into within the United States or during the performance of which and while the employee is employed on the vessel or aircraft it touches at a port in the United States, if the employee is employed on and in connection with such vessel or aircraft when outside the United States, and (B) any service, of whatever nature, performed after 1971 outside the United States (except in a contiguous country with which the United States has an agreement relating to unemployment compensation) by a citizen of the United States as an employee of an American employer (as defined in subsection (j)(3)), except—

(1) agricultural labor (as defined in subsection (k)) unless—

(A) such labor is performed for a person who—

(i) during any calendar quarter in the calendar year or the preceding calendar year paid remuneration in cash of $20,000 or more to individuals employed in agricultural labor (including labor performed by an alien referred to in subparagraph (B)), or

(ii) on each of some 20 days during the calendar year or the preceding calendar year, each day being in a different calendar week, employed in agricultural labor (including labor performed by an alien referred to in subparagraph (B)) for some portion of the day (whether or not at the same moment of time) 10 or more individuals; and

(B) such labor is not agricultural labor performed [before January 1, 1988,] by an individual who is an alien admitted to the United States to perform agricultural labor pursuant to sections 214(c) and 101(a)(15)(II) of the Immigration and Nationality Act;

* * * * * * *

ADDITIONAL VIEWS OF HON. RAMANO L. MAZZOLI

I am pleased the Judiciary Committee reported favorably on H.R. 3810, the Immigration Reform bill. In the main, this is a worthy legislative effort which seeks to establish a new national immigration policy for the United States.

It is a generous, encompassing and compassionate bill. It seeks to close the "back door" through which people enter the United States illegally so that the "front door", through which people enter this nation as legal immigrants and refugees fleeing persecution can be kept open.

I hope the Congress acts quickly to pass H.R. 3810 this year. It is clear to me that, unless Congress acts promptly the legislative initiative could be seized by seeking to answer the frustrations and pressures produced by the inability of today's immigration policy to deter illegal entry and to protect the vulnerable and exploitable entrant.

But, having said this, I must register my strong disagreement with the Committee's approval of the agricultural worker section of the bill.

The Committee, in an understandable effort to break a long-standing log-jam between western growers and agricultural labor groups adopted a plan developed by our colleagues, Representative Schumer and Representative Berman. Understandable but misguided.

It is, at heart, a rolling legalization program not an agricultural labor or temporary agricultural program.

It places persons on track for U.S. citizenship who have no more contact with this nation than 60 days of work in the fields. It grants these persons full public assistance benefits immediately. And, it sought, until amended at my insistence, to provide agricultural fields an absolute sanctuary against searches by the INS even, remarkably, when such searches were accompanied by a legal warrant. (Efforts to restore this quite unprecedented and unacceptable open-field sanctuary could be made in the other standing Committees to which H.R. 3810 will be referred).

It is, as I said, a rolling program of legalization in the guise of a farm-labor policy. On this legislation process starts it rolls along for at least ten years picking up people and distributing "green cards" along the way.

Under the plan, the initial group of farmworkers is expected, and even predicted, to leave the fields once they are "green carded" (after only 60 days of agricultural labor).

Their depleted ranks will be replenished for the ten year duration of the program by persons who will get their precious green card—guaranteeing their permanent residency in the U.S. and a chance to become citizens—after only 120 days of work.

During the Committee mark-up I pointed out these and numerous other flaws in this proposal. And, I pointed out how preferential this legislation program is in respect to the mainstream legalization program which is a centerpiece of H.R. 3810 and has been a centerpiece in each immigration bill we have addressed since 1982.

I intend to continue to point our these flaws and preferences in the hope of making necessary corrections as H.R. 3810 proceeds through the legislative process to final passage.

ROMANO L. MAZZOLI.

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ADDITIONAL VIEWS OF HON. DAN LUNGREN

Although I voted to report this Immigration Reform legislation out of Full Committee, I believe several provisions in the bill should be modified or eliminated.

For over seven years, I have worked for a comprehensive immigration reform bill that I feel this country desperately needs. In fact, the need for immigration reform continues to mount. With INS projecting almost double the number of apprehensions of undocumented individuals over last year, I am convinced that if we delay action further, somewhere down the line the problem may reach a magnitude where the legislative atmosphere is less conducive to a reasoned consideration of the issue. United States immigration policy is replete with examples of ad hoc responses to intermittent crisis as they have arisen throughout our history. Despite the many controversial issues that must be tackled, as policymakers I believe we must avoid future reactive responses by adopting a comprehensive reform bill which addresses today's U.S. immigration needs.

NEW AGRICULTURAL PROGRAM

I have long advocated that the agricultural labor issue is a major concern that must be addressed in any immigration reform bill. However, I strongly object to the current provision in the bill which gives permanent resident status to certain farm workers who have worked 60 days in American agriculture between May 1985 and May 1986. Aside from the 60 day requirement, these workers would not have to remain in agriculture work once they obtained their permanent resident papers or "green card" from INS.

In case a large number of these laborers leave agriculture, the proposal provides for "replenishment" workers after the first year. These "replenishment" workers would be required to work 60 days for 2 years or be sent home. The replenishment provision establishes a formula setting a declining cap of 5 percent after the first year and 10 percent for the following fiscal years through 1994. After 1995, the cap becomes 95 percent of the previous fiscal year (starting with fiscal year 1995). Replenishment is also subject to agriculture's "need" for non-domestic labor, determined by other criteria specified in the bill.

I strongly oppose this provision for the following reasons. First, it should be viewed as a secondary legalization program that undercuts all of the carefully crafted premises drafted by those of us who have supported legalization in the past. Although legalization is extremely important to comprehensive immigration reform, this additional provision is poor public policy and "extra baggage" on a bill that has enough detractors even without it. I have no doubt that

more of my colleagues will join me to object to this new secondary legalization program.

The original legalization program was carefully crafted over the years so that those who have continuously resided in the country for a substantial period of time and have not been wards of the welfare state, will be eligible to remain here permanently based on these equities. We specifically provide obligations, such as ineligibility for welfare benefits for five years, which I might add, has been in every single legalization program that has ever passed our Committee.

Yet, in the face of this, the agricultural proposal in the current bill creates another new legalization program which violates these premises. We now say that deep, long and enduring commitment to the United States is not commencing prior to 1982, is not five years or more, but only 60 days working in agriculture in one calendar year. That is somehow seen as a long-term commitment to the community of America. In addition, those people who have waited in the Philippines for 15 years to get here, and those people in Mexico, Africa, Europe and all over the world who have been lined up for years waiting for legal numbers must continue to wait while those who have worked for 60 days in agriculture in a one year period are given permanent residency immediately. In addition, this bill allows this group to be eligible for immediate welfare and to petition to bring their families into the United States.

In sum, after six years of intense discussion of forming a carefully crafted program on immigration reform, we have absolutely destroyed the premises upon which we previously have supported a legalization program.

Second, this initial group is not required to work a single day in agricultural jobs but can move into other non-agricultural jobs immediately. Therefore, I question whether the provision satisfies agriculture's needs at all since it is not known if a single eligible individual in this group will work in agriculture. Only after the first year is completed and necessary surveys done, will the agriculture employers be able to "replenish" needed workers from this non-domestic labor group—and then they will be limited by the cap to less than 100 percent of their proven need.

These are the most obvious problems with this provision, however, I could write volumes on other concerns raised by this program.

For example, eligibility for permanent lawful status under the 60-day man-day eligibility standard would be established through government employment records, "reliable evidence" supplied by workers, farm labor contractors, worker associations, collective bargaining organizations, and such other reliable documentations the worker may provide. Evidence for the work requirement can be provided by a collection of various organizations. However, criteria for verification of these records will be difficult to establish and the reliability of these organizations recordkeeping methods is unknown—if the data is available at all.

In addition, the system invites the use of false names. It will be difficult to separate and to locate records of individuals who should obtain credit for necessary agricultural employment and could even encourage the selling of names to others wishing to obtain the necessary documentation to qualify.

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Aliens apprehended during the application period can simply state a "non-frivolous case" of eligibility for adjustment under these provisions. Under the terms of the bill, they could not be deported until proven otherwise ineligible and would be granted work authorization. The provision fails to even define a "non-frivolous case." Therefore, those simply crossing the border claiming that they are agricultural workers and have worked for the necessary time period are given a presumption that they are eligible and must be allowed to remain and allowed to work until otherwise proven ineligible.

If individuals are apprehended, it is unclear under the provision whether they will be released on their own recognizance or must be detained. If detained, what facilities would be available for detention and who pays the cost of detention?

The proposal requires that beginning at the end of the application period, the Census Bureau shall conduct annual surveys of how many of those whose status has been adjusted under the provisions have actually worked in agriculture. In addition, the Secretaries of Labor and Agriculture must determine if agriculture's "needs" for labor should be further reduced by industry changes or agriculture's recruiting efforts for domestic labor.

However, the provision fails to specify how the Secretaries will conduct such surveys to modify the number of workers agriculture should need or how any dispute between the two agencies will be resolved. At the same time the Director of the Census Bureau is required to "adjust the number" of workers eligible for replenishment to take into account the "underreporting or duplicate reporting" of special agricultural workers who have performed seasonal agricultural work. Yet again, the provision does not specify the criteria to be used by the Director to determine how this number will be adjusted.

Many other questions and concerns could be raised about this provision, time allowing. However, I think these criticisms clearly indicate that this provision should be striken from the bill.

LEGALIZATION

During the markup I offered a two-tiered legalization amendment which I believe is preferable to the legalization provision in the bill as reported.

My proposal contains a two-tiered legalization program with a January 1, 1977 cut-off date for permanent resident status and a January 1, 1980 cut-off date for temporary resident status. This bill required candidates for legalization to have entered the United States prior to the applicable cut-off date and remain in the United States in continuous residency since that date. The bill currently provides for a single January 1, 1982 cut-off date.

I believe the Judiciary Committee acted unwisely this year in rejecting this two-tiered amendment that I offered.

A two-tiered legalization appropriately treats more recent illegal arrivals differently from persons who have lived in illegal status for longer periods of time. A temporary status gives an illegal alien (who lacks the equities a long-term U.S. residence) an opportunity to earn permanent residence through good conduct during a trial

period. This is a reasonable requirement for someone who has chosen to enter or remain in the United States in violation of our laws.

Permanent residents can petition for their immediate relatives under the second preference. The filing of large numbers of second preference petitions within a short period of time will greatly exacerbate waiting periods in that preference—forcing persons who immigrated legally to wait inordinately to bring in their immediate relatives. A two-tiered legalization proposal initially confers petitioning rights on a much smaller group and then increases the size of that group three years hence.

A failure to provide a substantial legalization program ignores the equities of persons who have lived in the United States for a number of years, perpetuates the existence of a large underclass of illegal aliens, and continues to subject citizens and lawful permanent resident aliens (as well as undocumented aliens) to enormous social costs.

The Select Commission's unanimous vote in favor of legalization underscores the absence of a viable alternative to confering legal status on many illegal aliens. The United States simply lacks the machinery to deport millions of people. Even an attempt at mass deportations, moreover, would subject members of minority groups to discriminatory treatment and involve the United States in foreign policy difficulties with major sending countries. For a variety of reasons, a legalization program is needed.

A legalization that is overly broad, on the other hand, carries great risks. The Select Commission recommended—in a unanimous December 1980 vote—that "no one be eligible [for legalization] who was not in the United States before January 1, 1980." That cut-off date excludes people who came to the United States after the Select Commission began actively discussing legalization.

Unduly advancing the date will encourage future flows in anticipation of another legalization. By adhering firmly to the 1980 date—the original date in this legislation—rather than rolling the date forward—we lend credence to the argument that this is a one-time legalization that will not be repeated. The perception that legalization will not be repeated is essential if we hope to avoid providing a new magnet to illegal migration.

SMALL EMPLOYER EXEMPTION FROM SANCTIONS

In addition to these needed changes, I also believe that this legislation should contain a small business exemption, as introduced in the original bill this year by Congressmen Rodino and Mazzoli (H.R. 3080). I offered an amendment in Committee that would have restored the small employer exemption so that a person or entity that employs three or fewer employees would be exempted from employer sanctions and recordkeeping requirements. The legislation now subjects all employers to employer sanctions and recordkeeping.

I believe this amendment is needed because the employer sanctions and paperwork requirements could prove to be burdensome to small employers. Individuals who hire 1 to 3 persons would be required to keep records these employees, even if it was for tempo-

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rary yardwork or other work, such as babysitting, domestic help, or running errands.

Aside from the burdens to the small employer enforcement would be difficult and costly. It would be difficult for INS to keep track of the thousands of employment settings (many of which occur in someone's private home) and store millions of records on these people. It would require INS to have additional personnel for enforcement and recordkeeping.

In addition, the House passed bill of the last Congress and the House-Senate Conference both included a small business exemption.

THE ANTI-DISCRIMINATION PROVISION

The bill as reported out of Committee, includes an anti-discrimination provision that is unnecessary and over inclusive.

Section 101 creates a new section 274B, which establishes discrimination in hiring or discharging based on an individual's national origin or citizenship status. This coverage is extremely broad, encompassing citizens, "intending citizens," aliens who are permanent residents, aliens temporarily admitted under the "legalization" provisions, and aliens granted either refugee status or asylum, and who have completed a declaration of intention to become a citizen.

All employers are subject to this anti-discrimination provision, except that claims of national-origin discrimination are barred if: (1) the complainant is covered by Section 703 of the Civil Rights Act of 1964; or (2) United States citizenship is required by Federal law, regulation, or executive order, a Federal, State or local-government contract, or by order of the Attorney General; or (3) English-language skill is a bona fide occupational qualification reasonably necessary to the normal operation of the enterprise.

An employer found to violate these provisions may be ordered to maintain a record-keeping system for all applicants, to hire or rehire individuals directly and adversely affected by the employer's hiring or discharge practices, with or without back pay, to pay a civil penalty of $1,000 for each individual discriminated against and to pay attorneys' fees. A penalty of $2,000 per violation may be assessed against an employer previously found to have engaged in discrimination.

Procedurally, any person alleging that "the person" has been "adversely affected directly" may complain to a "Special Counsel," created by the bill and appointed by the President with the advice and consent of the Senate. The Special Counsel must investigate all such complaints, to determine whether there is "reasonable cause" to believe that the charge is true. If so, then the Special Counsel may bring a complaint before an administrative law judge, who must be specially designed and trained by the Attorney General. The administrative law judge may then subpoena witnesses and evidence, and hold hearings. Subpoena enforcement rests with the federal district courts.

If the Special Counsel fails to file a complaint within one hundred and twenty days, the person making the charge may file a complaint directly before such judge.

An administrative order issued under this provision may be reviewed under Section 10(d), (e), (f), (g), and (j) of the National Labor Relations Act. The Standard of review would be the "substantial evidence" rule, consistent with that Act. The Special Counsel will exercise the powers of the National Labor Relations Board's General Counsel as specified by that Act.

I object to this provision because I believe that existing national-origin civil rights laws are sufficient protection for all from discrimination.

The anti-discriminatio provisions have been added to respond to fears that adoption of employer sanctions will cause discrimination against Hispanics or other "foreign-looking" people. I feel that these fears are unfounded. There is nothing in the legislation itself which gives rise to the need for this draconian change in our civil rights laws. The employer sanctions provisions of the bill do not make it illegal to hire new citizens. It would only be illegal to employ undocumented workers. Thus, the bill should not have a chilling on hiring legal resident non-citizens. In addition, the bill requires employers to take simple steps to verify an applicant's legal status, regardless of one's appearance, and in our view it is highly unlikely that employers would discriminate rather than comply with the bill.

However, even if the fears of discrimination against "foreign looking" individuals were to be well-founded, Title VII of the 1964 Civil Rights Act, 42. U.S.C. 2000e, already prohibits discrimination on the basis of national origin by employers with 15 or more employees, and permits both governmental and private enforcement actions. If discrimination were to arise, the more likely scenario would be an avoidance of anyone who seems foreign—the very thing which is covered by national origins discrimination. In addition, with respect to all employers with more than 3 employees, 42 U.S.C. 1981 provides a cause of action for someone discriminated against on the basis of national origin. In sum, discrimination on the basis of national origin is already prohibited by existing law and need not be drastically expanded by this bill.

The bill's provisions prohibiting discrimination on the basis of citizenship are simply not needed. There is no record that discrimination on the basis of alienage or citizenship is a significant problem, or will be one if this legislation is enacted. Paul Grossman (who received the MALDEF Service Award in 1981) testified before our Subcommittee on Immigration, that he has never heard of a case of alienage discrimination in his 20 years of labor law practice. In addition, there is something unsettling about a provision which would make it against the law for an employer to decide to hire a citizen over a non-citizen if in every other respect the individuals are equally qualified. This provision ironically has the potential of shifting the selection process over in favor of the non-citizen. Although the bill appears to recognize that there are some federal or state laws which legitimately limit some employment opportunities to citizens, there may be other situations in which a conflict could occur. For example, in complying with those provisions, a business aspiring someday to compete for defense contracts may run afoul of government legal restrictions which limit employment to U.S. citizens. The Congress would be making a significant error

to enact this kind of prohibition without any record of need or careful consideration of its ramifications on other employment matters.

In addition, the creation of the office of the "Special Counsel" is unwise, unnecessary and expensive. The EEOC already has jurisdiction over discrimination by employers based on national origin, and we see no reasoned basis for creation of a new bureaucracy with functions similar to those of one already in place. Having two entities enforcing essentially the same prohibitions could well lead to the creation of different enforcement standards.

DANIEL E. LUNGREN.

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DISSENTING VIEWS OF CONGRESSMAN F. JAMES SENSENBRENNER, JR.

In 1981, the Select Commission on Immigration and Refugees Policy issued a report which was to be the basis for legislation on immigration reform. As each succeeding Congress has tackled immigration reform, the resulting product has moved farther and farther away from the Commission's recommendations.

The Commission recommended and amnesty or legislation program, yet this bill ignores the criteria set for an amnesty program—changes in the current legal immigration program, a stronger border patrol, and effective measures to gain control of our entire immigration policy, among others. The Commission was careful not to set a cutoff date qualifying for amnesty which would act as a magnet to people who might be drawn by the hope of amnesty. They also set criteria which recognized that people who participate in the program must have built certain equities. They proposed a two-tier program which would appropriately treat more recent illegal arrivals differently from persons who have lived in an illegal status for longer periods of time. President Carter told Congress, "The purpose of granting a temporary status is to preserve a decision on the final status of these undocumented aliens, until much more precise information about their number, location, family size and economic situation can be collected and reviewed."

A blanket anmesty, particularly one with a cutoff date of January 1, 1982, is unfair for the over one million immigrant applicants, some of whom have been waiting as long as 12 years to come to this country legally, and still don't know how much longer they will have to wait. We are saying they should not have respected our laws. If they had come here illegally, they would be rewarded. We are keeping law abiding applicants out of the country while giving legal resident status to lawbreakers.

In October, 1985, the General Accounting Office (GAO) updated their earlier report and concluded that tough employer sanctions coupled by strict enforcement would go a long towards turning off the economic magnet which has been attracting so many illegal aliens. They further concluded that of the countries studied, there was little or no evidence of discrimination resulting from employer sanctions. In spite of this study and the off-chance is might happen, language was included which would give aliens more protections against job discrimination that U.S. citizens have.

The anti-discrimination language is totally unacceptable as a matter of policy and as a matter of law. The language of this section created more questions than anwsers, and revealed serious deficiencies and flaws. A new protected class would be created under federal civil rights laws. Coverage for aliens would be broadened to all employers with none of the protections which have been created over time and are in Title VII, such as occupational exceptions and

prohibitions against preferences. Different standards are allowed and unrealistic and unworkable time frames are set. The stage is also set for conflicting precedents and has Administrative Law Judges not only the final arbiter in such cases, but allows them to set attorney fees as well. To add insult to injury, even if a complaint was determined to have no merit and thrown out, a private law suit could still be filed against the employer through the provision allowing private right of action. Yet, language stating that all things being equal, it would not be against the law for an employer to prefer to hire a United States citizen was defeated.

American citizens, permanent resident aliens, people waiting overseas for visas to immigrate legally, and even those who have even a small equity in our country and apply for the amnesty program have had their interests compromised with the adoption of the Schumer amendment for agriculture. Rather then bring in workers for perishable crops as temporary or guest workers, this provisions will provide green cards and permanent resident status so they can enter the United States and pick crops. All workers have to do is to prove they have worked in agriculture in the U.S. for 60 days between May 1, 1985, and May 1, 1986, and they have 18 months to do it. The only restriction on these workers is they must work in agriculture 60 days per year for the next two years, or five years if they want citizenship.

This far-reaching proposal was offered without hearings to determine its impact, and questions which were posed to determine "how it would operate" were met with, "That will have to be worked out later." There is a replenishment program so that this small group in agriculture will have a continuous supply of workers, yet, no one could say for sure how it would work, who would qualify, or what criteria might be used to select these replenishment workers. Congress has the exclusive right and power to determine our immigration policy. Adoption of the Schumer amendment gives up that responsibility and gives that power to the Executive Branch and the bureaucracy because they are the ones down the line who will determine who comes in under the replenishment program, how many, and under what circumstances.

People who qualify for the amnesty program must meet all other qualifications for citizenship. They are assumed to be working productive people with an equity or a stake in the United States. The Schumer 60 day workers don't. Certain grounds for exclusion from the United States are waived including the possibility of becoming a public charge, the ability to read any language or dialect, and graduates of medical schools not accredited by the Commissioner of Education, who intend to perform services of the medical profession (32 of section 212[a]).

People who qualify for amnesty are excluded from receiving most welfare benefits for five years. The Schumer workers are eligible immediately for full welfare benefits. I supported the concept of 100 percent reimbursement to the states for the costs of the legalization program. I felt it was only fair. However, it is not fair to require the federal governmnent and the taxpayers to fully reimburse the costs of this program as well. Since there is no real way to determine how many workers these growers will need, we don't know how many people will be applying for these green cards, and

there is no cap on the number to be issued. They only have to work 60 days per year. We have no idea what the costs could be. If the work is as difficult as it is portrayed, is it illogical to think that some might prefer welfare to working beyond the mandatory 60 days? Look at some of the other programs and look at their track records.

With document fraud at an all time high in the United States, fears have been raised about the possibility of fraudulent documents being used in the amnesty program. People must prove they have lived and worked in the U.S. since 1982. The Schumer workers only have to account for 60 days with documents which would be difficult, if not impossible to verify, and easy to draw up.

Another major failure of the bill is that it does nothing to legal immigration or the preference system. We are placing a potentially fatal stress on our legal immigration system. If people from over 80 countries have found it easier to cross the border illegally rather than wait to enter legally, what are we going to do to the system when the newly legalized aliens under the amnesty program or the Schumer workers become eligible to petition for their relatives? Efforts to slow the crush on the most overburdened preferences, 2nd and 5th, were defeated primarily on the argument that this bill is dealing only with illegal immigration. Certainly giving green cards to the Schumer workers is legal immigration. Schumer workers don't even have to apply in the United States for their green cards. The 5th preference, brothers and sisters of U.S. citizens, is so backlogged, it is estimated that it would take at least 15 years to clear the existing petitions, assuming no other petitioner were filed. Schumer workers will be eligible to use the preference system before the newly amnestied will. Schumer workers will be able to petition under 2nd prefenence for their families immediately, the amnestied will have to wait one year.

This bill is rife with bad policy, bad legislation and bad precendents and cheapens the meaning and value of citizenship. Schumer workers have to work 60 days to qualify for permanent resident status, and are able to receive full welfare benefits. The rationale for the amnesty program is they are hardworking, honest individuals who have an equity in the United States. They must be here working since 1982, but don't qualify immediately for permanent resident status or welfare benefits. And, both of these groups have greater coverage against job discrimination than and United States citizen. I, quite frankly, don't know where the equity is in this bill.

F. JAMES SENSENBRENNER, Jr.

ADDITIONAL COMMENTS OF CONGRESSMEN WILLIAM J. HUGHES AND E. CLAY SHAW, JR.

There is little doubt that immigration reform is long overdue. But as the intensity of the current debate on the subject indicates, there is no clear consensus on how to best go about the task of controlling immigration, securing our borders, and dealing with the large number of illegal aliens already in this country.

Despite our general support for the thrust and intent of H.R. 3810, we have some concern with regard to the amnesty provisions in this bill. We strongly believe that legalization without increased immigration enforcement and border control activity will only encourage millions of new immigrants to come into this country illegally, and will require another amnesty program in the near future. The American people must not allow that to happen.

The Select Commission on Immigration and Refugee Policy clearly recognized the need for stronger border enforcement mechanisms in their report entitled, "U.S. Immigration Policy and the National Interest." The 1981 report specifically recommended that legalization not proceed until appropriate enforcement mechanisms have been instituted. The Commission similarly recommended that border patrol funding levels be raised to provide for a substantial increase in the numbers and training of enforcement personnel.

It is clear that our borders are out of control. Last year, the INS located 1,348,749 aliens who were deportable under the Immigration and Nationality Act. The agency has an average of only one agent on duty at any one time for every 9.8 miles along the southern border. The agency estimates it currently catches one out of every two illegal aliens who come across the border in the larger sectors, and one out of every three in the smaller sectors. About one-third of the total apprehensions are repeat offenders. A 1980 Census Bureau paper speculated that the undocumented alien population ranged between 3.5 and 6 million, with 50 to 60 percent estimated to be Mexican nationals.

We firmly believe that the far-reaching immigration problems facing this country must be resolved in a timely and comprehensive manner. Stagnating economic conditions in some parts of the world along with increased opportunities to move across borders, have created overwhelming immigration pressures. Our border agents are virtually overrun. Overworked and under-supported I.N.S. investigators cannot curtail the booming business in alien-smuggling, false documents, marriage frauds, and the placement of undocumented aliens in U.S. Jobs.

During the Judiciary Committee markup on H.R. 3810, we offered an amendment which would have implemented the Select Commission's recommendation by delaying the legalization program until a special Presidential commission found that the borders were adequately secured. Although the committee failed to

adopt our "triggered amnesty" amendment, we intend to offer a similar proposal when the legislation comes before the full House.

The United States desperately needs a workable solution to the immigration problems facing us today. The implementation of an effective employer-sanctions program and the legalization of many of those who have resided in this country before 1982 are only part of the solution. To assure that illegal immigration does not mushroom into an uncontrollable situation, however, our country must also make the commitment to give the I.N.S. the resources it needs to patrol our borders and enforce the immigration laws. Without this final element, legalization and employer sanctions outlined in this legislation will be meaningless.

WILLIAM J. HUGHES.
E. CLAY SHAW, Jr.

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